UNITED
NATIONS

A S

General Assembly
Security Council

Distr.
GENERAL

A/49/342
S/1994/1007
29 August 1994

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-ninth session
Item 152 of the provisional agenda*
REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

SECURITY COUNCIL
Forty-ninth year

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the first annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, submitted by the President of the International Tribunal in accordance with article 34 of its statute (see S/25704, annex), which states:

> "The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly."

* A/49/150.

LETTER OF TRANSMITTAL

17 August 1994

Your Excellencies,

I have the honour to submit the first annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, dated 28 July 1994, to the Security Council and the General Assembly, as mandated by article 34 of the statute of the Tribunal.

Accept, Excellencies, the renewed assurances of my highest consideration.

(Signed) Antonio CASSESE
President

H.E. Mr. Boutros Boutros-Ghali
Secretary-General
United Nations
New York, NY 10017
United States of America

H.E. Mr. Juan Antonio Yañez-Barnuevo
President of the Security Council
United Nations
New York, NY 10017
United States of America

ANNUAL REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

CONTENTS

	Paragraphs	Page
SUMMARY		7
Part One		
INTRODUCTION	1 - 51	9
I. ESTABLISHMENT OF THE TRIBUNAL	1 - 8	9
II. MAIN FEATURES OF THE TRIBUNAL	9 - 27	11
A. International character	10	11
B. Principal objectives of the Tribunal	11 - 18	11
C. Scope of the Tribunal's jurisdiction	19	13
D. Non-exclusive character of the Tribunal's jurisdiction	20	13
E. The defendants	21	13
F. Influence of the International Bill of Human Rights	22 - 26	14
G. Complexity of the Tribunal's tasks	27	14
III. MAIN PROBLEMS BESETTING THE ESTABLISHMENT AND FUNCTIONING OF THE TRIBUNAL	28 - 51	15
Part Two		
MAIN ACTIVITIES OF THE TRIBUNAL TO DATE	52 - 164	20
IV. ADOPTION OF THE RULES OF PROCEDURE AND EVIDENCE	52 - 97	20
A. Introductory remarks	52 - 57	20

CONTENTS (continued)

	Paragraphs	Page
B. Basic features of the proceedings	58 - 67	21
1. Due process of law, with particular reference to the rights of suspects and the accused	58 - 60	21
2. Outline of the proceedings	61 - 67	22
C. Fundamentals of the rules	68 - 97	23
1. Collegiate direction of the Tribunal's work	68 - 70	23
2. The adversarial system versus the inquisitorial system	71 - 74	23
3. A purpose-made set of rules	75 - 83	24
(a) Patterns of conduct	76 - 77	25
(b) Protection of witnesses	78 - 83	25
(i) Depositions	79	26
(ii) Measures for shielding the identity of witnesses	80	26
(iii) Victims and Witnesses Unit	81	26
(iv) Sexual assault	82 - 83	26
4. Need for State cooperation	84 - 89	27
(a) Obligation of States to cooperate	84 - 86	27
(b) Primacy of the Tribunal	87 - 89	27
5. Cases where the accused or his State tries to evade international justice	90 - 94	28
6. The role of non-governmental organizations	95 - 97	29
V. ADOPTION OF THE RULES OF DETENTION	98 - 116	30
A. Unique international character	98	30
B. Basic principles	99 - 100	30

CONTENTS (continued)

		Paragraphs	Page
C.	Another purpose-made set of rules	101 - 104	31
	1. Detainees	102	31
	2. Ethnic groupings	103 - 104	31
D.	Major concerns	105 - 113	31
	1. Rights of detainees	106 - 111	32
	2. Security	112 - 113	32
E.	Relationship with the host prison	114	33
F.	The authority in control of the Detention Unit	115	33
G.	Inspection	116	33
VI.	ESTABLISHMENT OF THE REGISTRY AND ITS FUNCTIONS	117 - 138	34
A.	Introduction	117 - 119	34
B.	Administrative and financial management	120 - 125	34
C.	Servicing the Tribunal	126 - 129	36
D.	Protection, counselling and support for victims and witnesses	130 - 132	36
E.	Assignment of counsel	133 - 138	37
VII.	STAFFING OF THE OFFICE OF THE PROSECUTOR AND ITS ACTIVITIES	139 - 164	38
A.	Introduction	139 - 142	38
B.	Structure and functioning of the Office of the Prosecutor	143 - 156	39
	1. Problems relating to staffing	143 - 149	39
	2. Structure of the Office of the Prosecutor	150 - 155	40
	3. Need for cooperation with other bodies	156	41

CONTENTS (continued)

	Paragraphs	Page
C. Relations with other bodies and with States	157 - 163	41
1. Commission of Experts	157 - 158	41
2. Contacts with States	159 - 161	42
3. Contacts with non-governmental organizations .	162	42
4. Contacts with the media	163	43
D. Concluding remarks	164	43
Part Three		
ACTIONS OF STATES MEMBERS OF THE UNITED NATIONS	165 - 188	44
VIII. COOPERATION OF THE HOST STATE	165 - 167	44
IX. HEADQUARTERS AGREEMENT	168 - 171	44
X. ENACTMENT OF IMPLEMENTING LEGISLATION	172 - 182	45
XI. VOLUNTARY CONTRIBUTIONS BY STATES	183 - 188	47
Part Four		
XII. CONCLUDING OBSERVATIONS	189 - 198	48
Annex. Composition of the Tribunal		52

SUMMARY

The present annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, its first, covers the period from 17 November 1993 to 28 July 1994 and describes in detail what the Tribunal has done during that period and what it has been obliged to leave undone.

The Tribunal is comprised of three organs: its judiciary, consisting of 11 judges assigned to 2 trial chambers and an appeals chamber; the Office of the Prosecutor, headed by the Prosecutor; and the Registry, headed by the Registrar.

The 11 judges were elected by the General Assembly in September 1993 and took office on 17 November 1993. An Acting Registrar was appointed by the Secretary-General in January 1994. A Prosecutor-designate was appointed by the Security Council on 21 October 1993 but stated that he would be unable to serve until February 1994. Then, in February 1994, he informed the Secretary-General that he was no longer available for appointment. It was not until 8 July 1994 that the Security Council appointed a new Prosecutor.

Accordingly, while the judges and the Acting Registrar have accomplished much in the months since they were appointed, the Office of the Prosecutor, responsible for the initiation and conduct of investigations and prosecutions, has been handicapped by the long delay in the appointment of a Prosecutor. Even so, the Acting Deputy Prosecutor has managed to make substantial progress in establishing the necessary infrastructure.

The work of the Tribunal, especially that of the Office of the Prosecutor and the Registry, has also been impeded by the unsatisfactory funding arrangements, which have, in particular, greatly hindered recruitment of staff.

The judges have elected a President, a Vice-President and Presiding Judges for each of the two trial chambers; determined the composition of all chambers; drawn up rules of procedure and evidence, believed to be the first detailed set of rules ever to be drafted for an international criminal tribunal, and rules governing the detention of persons awaiting trial or appeal. They have also dealt with a great variety of lesser matters ranging from the approval of the design of the Tribunal's courtroom and its detention facilities to the design of a seal for the Tribunal.

The Office of the Prosecutor has had to invent itself. Starting from nothing in early 1994, a staffing plan was first formulated and qualified and experienced staff were recruited. Then an information management and litigation support system was developed. A great array of information relevant to the Tribunal's jurisdiction, in large part provided by the Commission of Experts established pursuant to Security Council resolution 780 (1992) in 1992, was then assembled and registered and is being analysed. As a result, investigations in the field have now begun; the establishment of

a harmonious working relationship with the Commission of Experts ensured a continuity of effort and full utilization of the resources developed by it. Following the work of the investigators, the final stage of the Prosecutor's task will begin with the framing of indictments and the whole ensuing trial process.

The Registry of the Tribunal performs a unique range of duties: the administration and servicing of the Tribunal; all those core administrative functions common to other organizations; and the provision of support in the area of criminal court management, a complex and highly specialized function. In addition, the Registry has tasks foreign to both national and other international judicial bodies: it is charged with setting up a unit to assist victims and witnesses; it has the responsibility of creating a complete legal aid system, including the assignment of counsel; and it is also responsible for the day-to-day administration of the Detention Unit.

To date, much headway has been achieved in staffing the Registry as well as in establishing the framework for the Victims and Witnesses Unit. Moreover, the Registrar has issued a set of formal guidelines on the assignment of defence counsel.

Part One

INTRODUCTION

I. ESTABLISHMENT OF THE TRIBUNAL

1. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (referred to herein as "the Tribunal") was established by the Security Council in 1993 to provide a judicial solution to the grave breaches of international humanitarian law occurring in the region. Agreement in principle was reached by the Security Council in resolution 808 (1993), adopted on 22 February 1993. A report containing the statute was submitted within 60 days by the Secretary-General, as requested in resolution 808 (1993), and was unanimously adopted by the Council in its resolution 827 (1993) of 25 May 1993. The 11 judges of the Tribunal were elected by the General Assembly in September 1993 and took office on 17 November 1993.

2. Despite the short period of time that the Tribunal has been in existence, it has held four plenary sessions. The inaugural session took place in November-December 1993, when the judges were sworn in and a general debate took place, particularly regarding the rules of procedure and evidence; the second session in January-February 1994 was devoted mainly to discussion on and adoption of the rules of procedure and evidence of the Tribunal; at the third session in April-May 1994 rules of detention were adopted to regulate the conditions under which the accused who will appear before it will be held, together with guidelines concerning the assignment of counsel for indigent detainees; and at the fourth session, in July 1994, additional practical arrangements necessary before trials can commence, and other administrative matters, such as the preparation and adoption of the present report, were considered.

3. The speed with which both the United Nations and the Tribunal itself have fulfilled their respective roles in establishing the Tribunal and organizing its operations emphasizes the importance of the task in hand. The Tribunal is unique in modern history. It is the first international criminal tribunal ever to be established by the United Nations. Its only predecessors in living memory, the international military tribunals at Nürnberg and Tokyo, were created in very different circumstances and were based on moral and juridical principles of a fundamentally different nature.

4. The establishment of the Tribunal is a judicial response to the demands posed by the situation in the former Yugoslavia, where appalling war crimes and crimes against humanity are reported to have been perpetrated on a large scale: these are the two classes of offences the Tribunal has been created to try. As for the appropriateness of the Tribunal adjudicating war crimes, some years ago a great authority in this area, B. V. A. Röling, wrote:

> "For the very reason that war crimes are violations of the laws of war, that is of international law, an international judge should try the international offences. He is the best qualified." 1/

The Tribunal's suitability to try crimes against humanity also derives from the very nature of those crimes: recently a French Court of Appeal and, subsequently, the Cour de Cassation rightly pointed out in the Barbie case, that "crimes against humanity ... do not simply fall within the scope of ... municipal criminal law, but are subject to an international criminal order to which the notions of frontiers and extradition rules arising therefrom are completely foreign". 2/

5. Being the newest institutional arrival on the international judicial scene, the Tribunal has had to face a number of practical uncertainties and, indeed, criticism as to its legal basis and effectiveness. The Tribunal has not been deflected from the pursuit of its aims by these uncertainties and objections; instead it has endeavoured to resolve all those issues that lay within its own competence and to urge appropriate action on the part of others when the matter lay outside the competence of the Tribunal.

6. The fundamental uncertainty, for some, lies in the very method by which the Tribunal was created. In the period prior to the adoption of Security Council resolution 808 (1993), the United Nations, on a number of occasions, had debated the brutal and inhumane nature of the conflict in the region of the former Yugoslavia. In October 1992 a Commission of Experts was established by Security Council resolution 780 (1992) to provide the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions of 12 August 1949 and other violations of international humanitarian law.

7. The decision to establish a specific tribunal was made by the Security Council in February 1993. The total lack of progress towards peace in the region and the need to demonstrate to the international community that the United Nations was not sitting back idly while thousands were being brutally abused or massacred prompted the Security Council, in its resolution 808 (1993), to require the Secretary-General to submit proposals that would provide for "the effective and expeditious implementation" of its decision to set up a tribunal. Thus, the traditional approach of establishing such a body by treaty was discarded as being too slow (possibly taking many years to reach full ratification) and insufficiently effective as Member States could not be forced to ratify such a treaty against their wishes. Instead, the Security Council proceeded to establish the Tribunal by exercising its special powers under Chapter VII of the Charter of the United Nations.

8. The question of financing has had the strongest practical impact upon the establishment of the Tribunal and its operations to date. For the Tribunal to be able to work effectively, its budget needs to be certain in all respects. However, the Tribunal is currently operating on an interim budget and a commitment authority that expires on 31 December 1994. The problems this has created for the Tribunal in terms of staffing and other long-term commitments are discussed below.

II. MAIN FEATURES OF THE TRIBUNAL

9. Certain basic traits of the Tribunal stand out to distinguish it not only from war crimes tribunals of the past but also from any other mechanism for international dispute resolution.

A. International character

10. First, unlike the Nürnberg and Tokyo Tribunals, the Tribunal is truly international. It has rightly been stated that the Nürnberg and Tokyo Tribunals were "multinational tribunals, but not international tribunals in the strict sense", 3/ in that they represented only one segment of the world community: the victors. This was recognized by the Nürnberg Tribunal itself when it pointed out that, in creating the Nürnberg Tribunal and defining the law it was to administer, the four signatory Powers to its Charter "have done together what any one of them might have done singly". 4/ In other words, at Nürnberg each of the four victorious Powers could have tried the defendants itself; they preferred instead to set up a joint tribunal, acting simultaneously on behalf of all of them. The same holds true for Tokyo, although there the judges appointed by the Supreme Commander for the Allied Powers, General Douglas MacArthur, were nationals of 11 countries that had suffered from Japanese military activity, namely the 9 signatories to the instrument of Japanese surrender, plus India and the Philippines. By contrast, the Tribunal is not the organ of a group of States; it is an organ of the whole international community. The judges of the Tribunal come from all parts of the world, bringing with them the breadth of vision and experience needed for this complex task. The Tribunal is not bound by national rules either as to its procedure or its jurisdiction. Even the Detention Unit where persons will be held while awaiting trial is international in nature and is not within the control and supervision of the host State.

B. Principal objectives of the Tribunal

11. The purposes of the Tribunal have been laid down in Security Council resolution 808 (1993) and, in even more detailed form, in Security Council resolution 827 (1993). They are threefold: to do justice, to deter further crimes and to contribute to the restoration and maintenance of peace.

12. The first objective is set out in the preamble to Security Council resolution 827 (1993), which states, among other things, that the Tribunal is "to bring to justice the persons who are responsible" for crimes perpetrated in the former Yugoslavia.

13. The second objective is also laid down in the preamble to Security Council resolution 827 (1993), where it is stated that the establishment of the Tribunal "will contribute to ensuring that such violations [of international humanitarian law] are halted and effectively redressed". One of the main aims of the Security Council was to establish a judicial process capable of dissuading the parties to the conflict from perpetrating further crimes. It was hoped that, by bringing to justice those accused of massacres and similar egregious violations of international humanitarian law, both belligerents and civilians would be

discouraged from committing further atrocities. In short, the Tribunal is intended to act as a powerful deterrent to all parties against continued participation in inhuman acts.

14. The third objective pursued by the Security Council in its resolution 827 (1993) and by the Secretary-General was "to contribute to the restoration and maintenance of peace". Being a measure taken under Chapter VII of the Charter, in the face of a "threat to international peace and security", as determined in Security Council resolution 827 (1993), the Tribunal was conceived as one of the measures designed gradually to promote the end of armed hostilities and a return to normality.

15. Some apprehensions were expressed lest the establishment of the Tribunal might jeopardize the peace process. In fact, the Tribunal will contribute to the peace process by creating conditions rendering a return to normality less difficult. How could one hope to restore the rule of law and the development of stable, constructive and healthy relations among ethnic groups, within or between independent States, if the culprits are allowed to go unpunished? Those who have suffered, directly or indirectly, from their crimes are unlikely to forgive or set aside their deep resentment. How could a woman who had been raped by servicemen from a different ethnic group or a civilian whose parents or children had been killed in cold blood quell their desire for vengeance if they knew that the authors of these crimes were left unpunished and allowed to move around freely, possibly in the same town where their appalling actions had been perpetrated? The only civilized alternative to this desire for revenge is to render justice: to conduct a fair trial by a truly independent and impartial tribunal and to punish those found guilty. If no fair trial is held, feelings of hatred and resentment seething below the surface will, sooner or later, erupt and lead to renewed violence.

16. The role of the Tribunal cannot be overemphasized. Far from being a vehicle for revenge, it is a tool for promoting reconciliation and restoring true peace. If responsibility for the appalling crimes perpetrated in the former Yugoslavia is not attributed to individuals, then whole ethnic and religious groups will be held accountable for these crimes and branded as criminal. In other words, "collective responsibility" - a primitive and archaic concept - will gain the upper hand; eventually whole groups will be held guilty of massacres, torture, rape, ethnic cleansing, the wanton destruction of cities and villages. The history of the region clearly shows that clinging to feelings of "collective responsibility" easily degenerates into resentment, hatred and frustration and inevitably leads to further violence and new crimes.

17. Thus the establishment of the Tribunal should undoubtedly be regarded as a measure designed to promote peace by meting out justice in a manner conducive to the full establishment of healthy and cooperative relations among the various national and ethnic groups in the former Yugoslavia.

18. In sum, it would be wrong to assume that the Tribunal is based on the old maxim fiat justitia et pereat mundus (let justice be done, even if the world were to perish). The Tribunal is, rather, based on the maxim propounded by Hegel in 1821: fiat justitia ne pereat mundus 5/ (let justice be done lest the world should perish). Indeed, the judicial process aims at averting the

exacerbation and aggravation of conflict and tension, thereby contributing, albeit gradually, to a lasting peace.

C. Scope of the Tribunal's jurisdiction

19. The jurisdiction of the Tribunal differs from that of the Nürnberg and Tokyo tribunals in two fundamental respects. First, the Tribunal has jurisdiction over war crimes and crimes against humanity, in particular, genocide. Crimes against peace are not within the purview of the Tribunal. The underlying reason is probably that the Security Council preferred to reserve to itself competence in the field of aggression and similar crimes against peace. Secondly, whilst the Nürnberg and Tokyo tribunals dealt only with crimes committed in the course of an international armed conflict, the Tribunal is empowered to adjudicate crimes perpetrated in the course of both inter-State wars and internal strife.

D. Non-exclusive character of the Tribunal's jurisdiction

20. The Nürnberg Tribunal was set up to act in lieu of State courts to try those major war criminals whose offences had "no particular geographical location"; 6/ it left to State courts the task of following up its proceedings, in that these courts were to bring to justice minor criminals and members of the organizations found criminal by the Nürnberg Tribunal. Along similar lines, the Tokyo Tribunal was designed to substitute for any national criminal court. By contrast, the Tribunal does not monopolize criminal jurisdiction over certain categories of offences committed in the former Yugoslavia. It is not meant to deprive national courts of their criminal jurisdiction over war crimes and crimes against humanity. However, as discussed below (see paras. 87-89), the Tribunal has been endowed with the power to intervene at any stage of national proceedings and take over from them, whenever this proves to be in the interests of justice.

E. The defendants

21. The statutes of the Nürnberg and Tokyo tribunals made provision for the punishment of criminal organizations. The aim was to establish that, if an organization was held to be criminal, it entailed the possibility of an individual member being found guilty in subsequent proceedings before lesser (national) courts of the victorious Powers. By contrast, neither organizations, nor legal persons, nor States can be brought to trial before the Tribunal: proceedings can be instituted only against individuals. The concept of "collective" liability is increasingly yielding to the notion of individual responsibility in international humanitarian law.

F. Influence of the International Bill of Human Rights

22. The 1948 Universal Declaration of Human Rights 7/ and the two 1966 International Covenants on Human Rights 8/ have not been in vain: the Tribunal bears the strong imprint of the human rights problématique of the post-1945 period. For the first time, it can clearly be seen that human rights standards have also had a salutary and significant impact on the development of international criminal law. These standards are reflected in the statute and rules of the Tribunal in a number of ways.

23. First, there is absolute respect for the principle of "equality of arms" (where the prosecution and the defence are put on the same footing and given equal opportunities) and, in particular, the rights of the defence, including the right to counsel regardless of means, are fully safeguarded (International Covenant on Civil and Political Rights, art. 14, paras. 1 and 3).

24. Secondly, the accused is entitled to be present at his trial. Again, this requirement is derived from the International Covenant on Civil and Political Rights (art. 14, para. 3 (d)).

25. Thirdly, the Tribunal is not empowered to impose the death penalty (Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, of 1989). 9/

26. Fourthly, the right to appeal against a decision is laid down in the statute. To make it possible for the accused or the Prosecutor to appeal, without rendering the structure of the Tribunal too cumbersome, the Tribunal has been divided into two trial chambers, each with three judges, and an appeals chamber consisting of five judges. This essential guarantee of justice is derived from the right of review specified in the International Covenant on Civil and Political Rights (art. 14, para. 5).

G. Complexity of the Tribunal's tasks

27. In addition to all of the steps usually required to establish a new international institution, the Tribunal has been required to turn its attentions both to the quasi-legislative task of preparing a code of criminal procedure (its rules of procedure and evidence) and to the administrative and regulatory aspects of its activities. These include tasks as diverse as the provision of legal aid, assignment of counsel, an entire international process service, the design and construction of both a courtroom and a detention unit, rules and regulations governing the treatment of detainees, witness safeguards, arrangements for the transportation of witnesses to The Hague and the overall safety and security of judges, to name but a few.

III. MAIN PROBLEMS BESETTING THE ESTABLISHMENT AND FUNCTIONING OF THE TRIBUNAL

28. Despite the speed and goodwill with which the Tribunal was set up, it has encountered a number of significant difficulties in its first few months of existence. Some of these problems were within the power of the Tribunal to resolve and it has actively dealt with them; others were beyond its control.

29. These difficulties fall into three categories: practical, financial and structural.

30. The practical problems facing the Tribunal at its inception seemed endless. It was to be a completely new organization, growing from a paper report of 35 pages to an active international prosecutorial and judicial body. To do this, it needed judges, a prosecutor, a registrar, investigative and support staff, an extensive interpretation and translation system, a legal aid structure, premises, equipment, courtrooms, detention facilities, guards and all the related funding.

31. When the judges first met at The Hague, on 17 November 1993, they had available only a meeting room and three other rooms on loan from the Carnegie Foundation in the Peace Palace, the headquarters of the International Court of Justice (ICJ). The Office of Legal Affairs of the United Nations Secretariat had been able to put two legal officers at the disposal of the judges, plus four secretaries hired on the spot, on short-term contracts. There were no premises for the Tribunal and no permanent staff. In addition, the Prosecutor appointed by the Security Council had accepted the appointment subject to the condition that he would serve from early February 1994; this, of course, meant that he was unable to set up his office and start investigations before then. To add to the uncertainty, it was not even sure that The Hague would be the seat of the Tribunal. Lastly, the absence of any proper financial authorization by the General Assembly necessarily had led the Secretary-General to decide that the judges could be paid on an ad hoc basis only to the end of December 1993.

32. In this anomalous situation, one alternative would have been for the judges to confine themselves to taking office formally, electing the President, and deciding on the composition of the various chambers (the two trial chambers and the Appeals Chamber): having fulfilled these tasks, the Tribunal would then have adjourned until the General Assembly had taken a formal decision on the budget and provided for the indispensable minimum infrastructure. However, rather than allow precious time to be wasted, and notwithstanding the total lack of staff and financial resources, the judges decided to do what they could to set the stage for the eventual accomplishment of the Tribunal's objectives.

33. Accordingly, the judges immediately started an in-depth discussion on the principles that should underlie that important and, indeed, indispensable piece of secondary legislation they were called upon to pass: the rules of procedure and evidence (see pt. II, chap. I below). In addition, they took all steps necessary to speed up the process leading to the firm establishment of the Tribunal. Thus, among other things, and with the unfailing support of the Secretary-General and the authorities of the Netherlands, they identified

premises in The Hague that appeared suitable for the Tribunal once the necessary changes and modifications had been carried out.

34. Many of the aforementioned problems were inextricably linked with the financial difficulties encountered by the Tribunal. In December 1993, the General Assembly granted the Secretary-General an initial commitment authority of US$ 5.6 million for six months (1 January-30 June 1994), pending a decision on the mode of financing after review and approval by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the Fifth Committee of the General Assembly.

35. This limited financing had a substantial and detrimental effect, which was entirely foreseeable, on the Tribunal's ability to establish itself as quickly as it would have wished. As the allocation ran for only six months, the Tribunal could not enter into any long-term commitments extending beyond June 1994. In practical terms, this meant that no formal lease for premises could be entered into, especially as additional work would be required to convert available property to the specific needs of the Tribunal; the Tribunal could not recruit experienced staff and personnel other than on short-term contracts, thus restricting the choice considerably; and it could not purchase and install the technical equipment necessary to start investigations. In short, it was operating with one hand tied behind its back.

36. Some of these problems have now been resolved, at least in part, by the provision in April 1994 by the General Assembly of a further US$ 5.4 million allocation to end-December 1994, together with a specific authority for the Secretary-General to enter into a contract for the premises and to recruit personnel for terms extending beyond that date. Consequently, a four-year lease for the premises of the Tribunal was signed in July 1994. This has enabled the Tribunal to commence the conversion of office space into one courtroom, with its related facilities, an obvious prerequisite to any trial, as well as commencing renovations to the premises to be occupied by the Office of the Prosecutor. However, the courtroom will not be ready for use until mid-October at the earliest. Moreover, only one courtroom for use by all three chambers of the Tribunal is obviously inadequate, yet that is all that is currently budgeted for. Staff are now being recruited but the inevitable lead-time for recruitment, especially at the senior level, has meant that the Office of the Prosecutor, in particular, is still operating with insufficient staff. Furthermore, the judges are still being paid on an ad hoc basis.

37. With regard to other practical issues, the one item that dominated all others, until very recently, was the appointment of a Prosecutor. The unfortunate turn of events whereby the Prosecutor-designate withdrew in February, and the ensuing five-month delay in appointing his successor was a major blow to the Tribunal. The Tribunal is indeed fortunate in having had a dedicated and energetic Acting Deputy Prosecutor in place, but there are matters which, pursuant to the statute and the rules of procedure and evidence, should be handled by the Prosecutor. The appointment of the Honourable Mr. Richard J. Goldstone as Prosecutor in July 1994 means that the final key element of the Tribunal's structure is now in place.

38. The last remaining problem faced by the Tribunal was the absence of any legal framework necessary to enable the Tribunal to conduct its investigatory and judicial tasks on a day-to-day basis. This was, however, within the Tribunal's own power to remedy.

39. Here the Tribunal undertook pioneering work in the field of international criminal law. Not only did it draft and adopt its rules of procedure and evidence in the space of less than four months, but also rules of detention governing the Detention Unit. It has also adopted guidelines on the assignment of counsel, and has created a working framework for a Victims and Witnesses Unit within the Registry.

40. Additional internal regulations are being prepared for the Detention Unit, governing the conduct of the staff, the disciplinary procedures, the complaints process and appointment of an inspecting body. A number of agreements have been negotiated with the host State, including a headquarters agreement and an agreement on security and order.

41. Judges have been assigned to chambers and to a rota for review of indictments. Four plenary sessions have been held. The constitutive documents of the Tribunal have been prepared for publication, complete with an index, and considerable amounts of legal research are being done in preparation for the first trials.

42. Having done everything currently within its power to prepare for the task before it, all the Tribunal now asks is the support of each State Member of the United Nations to ensure that those matters outside its power are resolved as a matter of urgency, so as to enable it to go forward and fulfil the important mission entrusted to it.

43. In addition to the political, financial and logistical problems encountered by the Tribunal during the first months of its existence, one should also mention the sceptical reactions to its establishment in some official and unofficial circles, together with the principal elements of this scepticism and how the Tribunal has reacted to them.

44. It is not for the Tribunal to speak for the Security Council or the General Assembly in responding to critics of its creation: the Tribunal exists; it is entrusted with a worthy task and stands ready to fulfil it. To the extent, however, that such criticisms put into question its ability to carry out its task or its legitimacy so to do, they have to be addressed in order to evaluate whether the task of the Tribunal is indeed an impossible one.

45. A criticism often levelled at the Tribunal is that it will be unable to compel the appearance of those charged with crimes within its jurisdiction. The answer can be found in the rules of procedure and evidence recently adopted by the Tribunal. In addition to the specific procedures set down in rules 59 to 61 with respect to cases where the accused absconds, or the relevant State fails to arrest or deliver him to the Tribunal, the means available to the Tribunal include the power to call the attention of the Security Council and, through it, of the international community, to attempts by individuals or States to obstruct international justice.

46. Another recurrent criticism is that the Security Council has adopted a selective approach: while it has set up a criminal tribunal on this occasion, it refrained from doing so on other occasions of mass violations of human rights or genocide.

47. Of course, it is for the Security Council, and only the Security Council, to decide when special circumstances exist under Chapter VII of the Charter that warrant the establishment of a penal institution competent to try large-scale breaches of human rights. It is an undeniable fact that the creation of the Tribunal has set a momentous precedent, one that, hopefully, the world community will take up in the future whenever a need arises to mete out international justice in a fully impartial way. To those who criticize the "selective approach" of the Security Council, one should point out that the establishment of the Tribunal is a welcome step that can bear fruit in the future by providing a model that might be adopted in other situations. It is well known that, in the international community, progress takes place in a different way from that in municipal legal systems: often new legal institutions are created not in the light of and as a result of a complex and all-embracing design but under the pressure of specific circumstances. As the International Military Tribunal at Nürnberg put it, international law "is not static, but by continual adaptation follows the needs of a changing world". 10/ Whenever new institutions are set up that turn out to be useful and productive, they may have a snowballing effect.

48. Finally, one should also mention the scepticism expressed by those who argue that, in any case, the Tribunal will never be able to bring to justice those in command: plainly, reference is made here to those responsible for planning or ordering large-scale breaches of international humanitarian law occurring in the former Yugoslavia, or for omitting to prevent or punish the perpetrators of such breaches.

49. This objection assumes that the Tribunal will be unable to bring to trial all those who, under its statute, may be charged with war crimes or crimes against humanity. That is an entirely wrong assumption: the Tribunal will proceed against any person, regardless of status and rank, against whom the Prosecutor has issued an indictment confirmed by a judge of the Tribunal. Whenever practical obstacles arise that might hamper the fulfilment of its mission, the Tribunal will rely on the Security Council to implement any step conducive to the full accomplishment of its judicial action.

50. On the other hand, one should not be blind to the fact that, from the victim's point of view, what matters is that there should be public disclosure of the inhuman acts from which he or she has suffered and that the actual perpetrator of the crime be tried and, if found guilty, punished.

51. For the victims (or relatives of victims) of rape, ethnic cleansing, torture, genocide or wanton destruction of property, the punishment of the authors of those barbarous acts by an impartial tribunal can be a means, at least in part, of alleviating their suffering and anguish. To those victims it may matter less that those in command also be called to account for any responsibility they might bear for instigating or condoning the perpetration of those crimes. "Command responsibility" is primarily an exigency of the world

community, which intends to see to it that "system criminality" - that is, the obnoxious involvement of policy makers in widespread and systematic disregard of human rights - be punished too, so that the root causes of international criminality can be eliminated in the country concerned.

Part Two

MAIN ACTIVITIES OF THE TRIBUNAL TO DATE

IV. ADOPTION OF THE RULES OF PROCEDURE AND EVIDENCE

A. Introductory remarks

52. The rules of procedure and evidence provide the necessary structure for the functioning of all three organs of the Tribunal: the chambers, including proceedings before the two trial chambers and the Appeals Chamber; the Office of the Prosecutor, covering investigations, indictments, trials and appeals; and the Registry, which provides administrative support for the Tribunal as a whole.

53. In drafting the rules, the judges of the Tribunal tried to capture the international character of the Tribunal. Only measures on which there is broad agreement have been adopted, thus reflecting concepts that are generally recognized as being fair and just in the international arena. The Tribunal has also attempted to strike a balance between the strictly constructionist and the teleological approaches in the interpretation of the Statute.

54. As a body of a unique character in international law, the Tribunal has had little by way of precedent to guide it. The two other international criminal tribunals that preceded it, at Nürnberg and Tokyo, both had very rudimentary rules of procedure: the rules of procedure of the Nürnberg Tribunal scarcely covered three and a half pages, with a total of 11 rules, and all procedural problems were resolved by individual decisions of the Tribunal; at Tokyo, there were only nine rules of procedure, which formed part of the statute of the Tribunal. Again, all other matters were left to the case-by-case ruling of the Tribunal.

55. The judges began the process of drafting rules of procedure and evidence for the Tribunal in November 1993 with a general debate on the concepts to be included in those rules. This then enabled the judges to go on to prepare, between sessions, a complete draft of the rules for discussion. After extensive debate and revision, the rules, which number 125 in total, were adopted at the end of the second session in February 1994. The judges were very much assisted in this task by members of the Office of Legal Affairs of the United Nations Secretariat. They were also much assisted by the extensive proposals made by States and by a number of non-governmental organizations (NGOs).

56. Four reasons prompted the Tribunal to act in this expeditious way. First, the Tribunal felt that it was under a moral obligation to commence proceedings as quickly as possible so that all parties, whether victims or perpetrators, local participants or distant spectators, could see that such flagrant abuses of human rights would not be allowed to go unpunished. Early trials would also have a deterrent effect. Secondly, the Prosecutor could not fully perform his task of investigation and prosecution without the guidance and framework provided by the rules. Thirdly, judges felt that the rules would be of assistance to Member States for the purpose of enacting or amending national legislation where necessary in order to comply with the obligation, contained in

the statute and in Security Council resolution 827 (1993), to cooperate with the Tribunal in all aspects of its operations and proceedings. Lastly, as the Tribunal was breaking new ground by adopting these rules, it was felt that early publication of the rules would enable Governments, NGOs and other interested bodies to comment on the rules in some detail and to suggest possible improvements for consideration by the Tribunal before the commencement of actual proceedings.

57. In the interests of the proper administration of justice, it was deemed important to adopt precise and detailed rules to govern the principal aspects of the proceedings and to provide a solid basis for the rights of the defence. Therefore, the rules of procedure and evidence have been arranged in a logical sequence to reflect the actual steps in the proceedings, so as to assist both the accused and counsel appearing before the Tribunal. In addition, every attempt has been made to draft the rules in plain, accessible language.

B. Basic features of the proceedings

1. Due process of law, with particular reference to the rights of suspects and the accused

58. The statute incorporates all the fundamental guarantees of a fair and expeditious trial that are enshrined in international instruments for the protection of human rights and, more specifically, in article 14 of the International Covenant on Civil and Political Rights. This all-important provision is designed, in particular, to safeguard the basic rights of the accused. These rights have been restated in article 21 of the Tribunal's statute.

59. However, the draftsmen of the statute decided to go even further than article 14 of the International Covenant and, in article 18, paragraph 3, of the statute, laid down certain rights relating to the pretrial phase, including the provision of fundamental safeguards for persons who are not yet "accused" but only "suspects". Under that article, a suspect has a right to legal counsel, including free legal assistance if indigent, as well as the right to any necessary translation to and from a language he speaks and understands. The Tribunal's rules of procedure and evidence reaffirm and expand these safeguards for both the suspect (rules 42-45) and the accused (rules 62, 63, 65-68 and 72).

60. The rules spell out the principle of due process of law and lay down, in detail, guarantees ensuring fundamental fairness and substantial justice. Thus, they specify, among other things, the principle of "equality of arms" whereby the accuser and the accused must be put on the same footing, without any advantage accruing to the accuser, that is, the prosecutor (rules 66-68); the right to legal counsel, if necessary at the expense of the Tribunal (rule 42); the right to a public hearing (rule 78); the right of the accused to test the prosecution evidence and present evidence on his own behalf (rule 85); the presumption of innocence (rules 62 and 87); and the right to be protected against self-incrimination (rule 90).

2. Outline of the proceedings

61. It may prove useful to set out briefly the main steps of the proceedings, as outlined in the statute and detailed in the rules of procedure and evidence.

62. The only person who may commence proceedings is the Prosecutor, or the Deputy Prosecutor acting in his absence or when expressly delegated by him. Proceedings before the Tribunal cannot be initiated by the alleged victim or his representative or by an NGO or a Government. The Prosecutor sets the judicial process in motion after collecting evidence on his own initiative or based on complaints, information or reports received from individuals (including the alleged victim), Governments, non-governmental and intergovernmental organizations or other sources.

63. To initiate proceedings, the Prosecutor must issue an indictment supported by evidence; the indictment is submitted to the judge previously designated by the President for the review of indictments in that particular month. If the judge confirms it, the indictment is, in principle, made public. At the request of the Prosecutor, the judge may then issue orders for the arrest or the transfer of the accused, or search warrants. All orders or warrants issued by a Tribunal judge are sent to the competent authorities of the relevant State and it is for such national authorities to execute those orders or warrants.

64. On arrest, the accused will be transferred to The Hague, where he will be detained on remand in the Detention Unit under United Nations control and supervision. As soon as possible after arrival, he is brought before a trial chamber and formally charged. The Prosecutor must disclose to the defence the evidence in his possession and the same applies to the defence. On a date set by the Registrar, at the request of the Trial Chamber, the actual trial will commence. At the trial, the two contending parties will be the Prosecutor and the defence counsel; the accused will be present and may be questioned only as a witness in his own defence. Individuals and organizations or Governments may, by leave, present written or oral submissions as amicus curiae.

65. The actual trial unwinds as follows: after opening statements by the parties, the Prosecutor presents written or testimonial evidence; witnesses may be cross-examined by counsel for the defence; then the defence presents its evidence, and its witnesses may be cross-examined by the prosecution. Evidence in rebuttal may then be presented. After the presentation of evidence the two parties make their closing arguments. Thereafter, the Trial Chamber deliberates in camera and pronounces its findings in public. If it finds the accused guilty, a new stage, that of sentencing, starts, at the end of which the Chamber pronounces sentence.

66. An appeal against the judgement may be lodged within 30 days, by either the prosecution or the defence, on the grounds set out in article 25 of the statute. The Appeals Chamber pronounces upon it after following a procedure similar, mutatis mutandis, to that before the Trial Chamber.

67. If the accused is sentenced to imprisonment, the sentence will be served in one of the countries that have indicated to the Security Council their

willingness to accept convicted persons; the specific country will be designated by the President.

C. Fundamentals of the rules

1. Collegiate direction of the Tribunal's work

68. The statute of the Tribunal, as drafted in the report prepared by the Secretary-General, grants a major role to the President of the Tribunal. In addition to taking all important decisions when the Tribunal is not in session, it was foreseen that the President would also play a substantial role in the conduct of business whenever the Tribunal met in plenary session.

69. On the proposal of the President himself, the Tribunal provided, in the rules of procedure and evidence, for the election of a Vice-President and also for the establishment of a Bureau consisting of the President, the Vice-President and the presiding judges of the two trial chambers. The Bureau was assigned the task of implementing a number of decisions and of determining administrative matters that do not require consideration by the full Tribunal. Consequently, a number of specific powers of considerable importance have been granted to the Bureau. In particular, the Bureau has responsibility for determining an application for the disqualification of a judge (rule 15). The Bureau is also to be consulted in the appointment of the Deputy Registrar and other Registry staff (rule 31) and on all major issues relating to the functioning of the Tribunal (rule 23). In addition, the Bureau plays an important role in the implementation of administrative rules and regulations issued by the Tribunal, for example, under the Tribunal's rules of detention.

70. There are two interrelated reasons for the strong emphasis placed on the collegiate direction of the Tribunal's work. On one hand the Tribunal will be called upon to make delicate administrative decisions concerning matters such as cooperation with States. It was therefore felt - particularly at the beginning of the Tribunal's activities, when teething problems may make mistakes more likely - that such crucial decisions should be taken by the Tribunal as a whole or, should it not be in session, in any event by more than one person. Similarly, one of the salient features of the Tribunal lies in its membership: a combination of judges, lawyers and academics rooted in various legal systems covering the full spectrum of potential legal issues, from individual human rights to international law, from criminal prosecution to the appellate process. It was therefore deemed appropriate to place the governance of the Tribunal in the hands of a small group of members rather than of one individual.

2. The adversarial system versus the inquisitorial system

71. Based on the limited precedent of the Nürnberg and Tokyo trials, the statute of the Tribunal has adopted a largely adversarial approach to its procedures, rather than the inquisitorial system prevailing in continental Europe and elsewhere. There is no investigating judge collecting the evidence. The initial task of inquiring into allegations of offences and obtaining the necessary evidence falls on the Prosecutor (rules 39-43). He is the one who

submits indictments to a judge for confirmation and who argues the case before the Chamber (rules 47, 84 and 85). However, at the trial, the prosecution and the defence have been put on the same footing: after confirmation of the indictment, the defence is entitled to collect and to have access to all relevant evidence; and both the prosecution and the defence are reciprocally bound to disclose all documents and witnesses. Each party is entitled to cross-examine the witnesses presented by the other party. Thus the rights of the accused are fully safeguarded and the setting for a fair trial is created (rules 66-67). One can discern in the statute and the rules a conscious effort to avoid some of the often-mentioned flaws of Nürnberg and Tokyo.

72. However, there are three important deviations from some adversarial systems. The first is that, as at Nürnberg and Tokyo, there are no technical rules for the admissibility of evidence. This Tribunal does not need to shackle itself to restrictive rules that have developed out of the ancient trial-by-jury system. There will be no jury sitting at the Tribunal, needing to be shielded from irrelevancies or given guidance as to the weight of the evidence they have heard. The judges will be solely responsible for weighing the probative value of the evidence before them. Consequently, all relevant evidence may be admitted to the Tribunal unless its probative value is substantially outweighed by the need to ensure a fair trial (rule 89) or where the evidence was obtained by a serious violation of human rights (rule 95).

73. Secondly, while normally, in the adversarial system, the court must be content with the evidence produced by the parties, the Tribunal may order the production of additional or new evidence <u>proprio motu</u> (rule 98). This will enable the Tribunal to ensure that it is fully satisfied with the evidence on which its final decisions are based. It was felt that, in the international sphere, the interests of justice are best served by such a provision and that the diminution, if any, of the parties' rights is minimal by comparison.

74. Thirdly, the granting of immunity and the practice of plea-bargaining find no place in the rules. It remains entirely a matter for the Prosecutor to determine against whom to proceed. Cooperation from an accused will also be taken into account by the Chambers as a mitigating factor in sentencing (rule 101), as well as by the President for the purpose of granting pardon or commutation of sentence (rule 125).

3. <u>A purpose-made set of rules</u>

75. As an ad hoc institution, the Tribunal has been able to mould its rules and procedures to fit the task in hand. The Tribunal is charged with sole responsibility for judging the alleged perpetrators of some of the most reprehensible crimes known to man, committed not on some foreign battlefield but on their own home ground, acts of terror and barbarism committed against their own neighbours. The Tribunal therefore decided, when preparing its rules, to take into account the most conspicuous aspects of the armed conflict in the former Yugoslavia. First among these is the fact that, in the former Yugoslavia, it is not simply a matter of war between the armies of two belligerent States or even between a single disciplined force with clear command structures and a civilian population. Instead, there are a number of parties

involved in the conflict, ranging from the regular armies of States to militias and paramilitary groups, with conspicuous uncertainty about who is in control of the latter. Secondly, an internecine strife is under way, aggravated by ethnic and religious conflict, with the result that intergroup hatred takes the form of ethnic cleansing, genocide, mass rape and other manifestations of large-scale and widespread breaches of human rights. Ethnic hatred springs afresh to turn friend into foe and places the claims of ancient blood above those of common humanity and decency. Thirdly, the unbearable abuses perpetrated in the region have spread terror and deep anguish among the civilian population. It follows that witnesses of massacres and atrocities may be deterred from testifying about those crimes or else be profoundly worried about the possible negative consequences that their testimony could have for themselves or for their relatives. In drafting the rules of procedure and evidence, the judges of the Tribunal have endeavoured to incorporate rules that address issues of particular concern arising from those aspects of the conflict, namely patterns of conduct, the protection of witnesses and sexual assault.

(a) Patterns of conduct

76. Trials before the Tribunal will involve charges of crimes against humanity such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against the civilian population on ethnic, national, political, racial or religious grounds (see art. 5 of the statute and para. 48 of the Secretary-General's report (S/25704)). In trying such charges, the Tribunal will need to look not only at the behaviour of individual defendants but also at the more general conduct of groups, or military or paramilitary units, and to establish that the mass crimes alleged to have been committed in the former Yugoslavia are not individual events but part of a wider systematic practice; hence the importance of providing for the admissibility of evidence relating to "patterns of conduct" (rule 93). Obviously, it will then be for the judges to determine what weight to give to such evidence in establishing the elements of the alleged offence. Evidence relating to patterns of conduct will be particularly relevant in matters of sexual assault, to establish the existence of coercion sufficient to vitiate any alleged consent (rule 96).

77. This evidence may also prove of great significance whenever one has to establish whether one of the basic requirements of genocide, namely "the intent to destroy, in whole or in part, a group" is present. Plainly, whenever the intent has not been expressly and specifically manifested, one of the means of ascertaining its existence may lie in investigating the consistent behaviour of groups or units, so as to determine whether that intent may be inferred from their "pattern of conduct".

(b) Protection of witnesses

78. The judges are very much aware that there may be considerable reluctance on the part of witnesses to appear before the Tribunal to testify. Often the principal witness against the perpetrator of a crime will be the victim, who may feel threatened, either directly or indirectly. For example, the victim may have family still within an area held by forces sympathetic to the accused. An overriding concern has been how to enable witnesses to testify freely. This will be especially important if the Tribunal is to be successful in bringing to

trial political and military leaders and those who are higher in the chain of command. These problems have been dealt with in the following ways.

(i) Depositions

79. In exceptional circumstances the prosecution and the defence are permitted to submit evidence by way of deposition, that is, testimony given by witnesses who are unable or unwilling to testify subsequently in open court (rules 71 and 90). This has the added advantage that it may enable the Tribunal to proceed on the basis of such evidence in cases where the witness has subsequently disappeared. Depositions may be made locally and may be taken by means of video-conference, if appropriate (rule 71). In order to protect the "equality of arms" (and, in particular, the rights of the accused), the procedure for taking depositions allows for cross-examination of the witness.

(ii) Measures for shielding the identity of witnesses

80. Another protection is that arrangements may be made for the identity of a witness who may be at risk not to be disclosed to the accused until such time as the witness can be brought under the protection of the Tribunal (rule 69). Witnesses may also be protected from public identification, if appropriate (rule 75).

(iii) Victims and Witnesses Unit

81. The most important provision for the protection of witnesses in the rules of procedure, and the most innovative in international law, is the establishment of a Victims and Witnesses Unit within the Registry (rule 34). The judges have never allowed themselves to lose sight of the fact that victims and witnesses have rights worthy of protection. The Tribunal has created a special unit to provide counselling, not only on legal rights but also to give psychological help and support, and to recommend protective measures, where required. As it is intended that this Unit will deal mainly with female victims of rape and sexual assault, qualified women will be hired for this Unit whenever possible.

(iv) Sexual assault

82. The Tribunal recognizes that many of the victims of the conflict in the former Yugoslavia are women and has placed special emphasis on crimes against women in the rules of procedure. The rules refer generally to crimes of sexual assault, rather than to the specific category of rape, and make special provision as to the standard of evidence, and matters of credibility of the witness, which may be raised by the defence (rule 96).

83. In particular, no corroboration of the victim's testimony is required in matters of sexual assault. The victim's previous sexual conduct is irrelevant and inadmissible. If a defence of consent is raised, the Tribunal may take note of factors that vitiate consent, including physical violence and moral or psychological constraints.

4. Need for State cooperation

(a) Obligation of States to cooperate

84. It is well known that the Allied Powers that set up the international tribunals at Nürnberg and Tokyo wielded full authority and control over the territory of Germany and Japan respectively and, in addition, had already apprehended the defendants when the trials commenced. Consequently, those tribunals did not need the cooperation of the defendants' national authorities or those of other countries for the prosecutors' investigations and collection of evidence. The situation is totally different for the Tribunal. The Security Council, when it established the Tribunal, was aware that it lacked any direct authority over the territories of States Members of the United Nations and, in particular, of the successor republics of the former Yugoslavia. Thus, the Tribunal was not endowed with direct enforcement powers: it has no law enforcement agents at its disposal entitled to carry out investigations, subpoena witnesses, or serve arrest warrants in the territories of States Members of the United Nations. To fulfil all these tasks, the Tribunal must rely upon the domestic legal system and the enforcement machinery of each State. Consequently, all requests from the Tribunal for arrest, search, surrender or transfer of persons are addressed to, and processed by, the municipal system of the relevant State. In this respect it must, however, be emphasized that all States are under a strict obligation to cooperate with the Tribunal and to comply with its requests and orders. This obligation, which is forcefully laid down in article 29 of the statute, flows from the fact that the Tribunal has been established by a decision of the Security Council taken under Chapter VII of the Charter. That decision is, therefore, binding on all States by virtue of Article 25 of the Charter.

85. Plainly, to comply with this obligation, all States need to enact implementing legislation designed to bring their municipal legal system in line with the requirements of the statute. As is pointed out in part III, section III below, such legislation has already been promulgated by a number of States, while other States are in the process of passing it.

86. The rules repeat the duty for States, laid down in the statute, to act promptly in executing a warrant of arrest, or any other order of the Tribunal, and restate the principle that the obligation of a State to surrender the accused prevails over any legal impediment in its national legislation (rules 56 and 58). The Tribunal may request a State to provide it with any information the State has acquired in the course of its own investigations or proceedings and the State is required, under the statute, to transmit all information so requested (rule 8). Cases where a State fails to enact implementing legislation or refuses to cooperate may be reported to the Security Council (rule 61). This applies as much to the republics of the former Yugoslavia as to any other State. If such a step proves necessary, the Tribunal will look to the members of the Security Council for support on an international scale.

(b) Primacy of the Tribunal

87. As has already been pointed out (see para. 20 above), the statute provides that the Tribunal should not exercise exclusive jurisdiction over the war crimes

and crimes against humanity that it is called upon to prosecute and try. Instead, the Tribunal was granted concurrent jurisdiction with that of national courts over the same crimes. Indeed, given the huge number of potential cases and the fact that many defendants may find themselves in countries whose authorities are willing and prepared to bring them to justice, it was felt it would be salutary if national courts exercised their jurisdiction under their own legislation or on the strength of the 1949 Geneva Conventions.

88. To avoid any possible negative consequences of this concurrent jurisdiction, the statute enshrines the non bis in idem principle, whereby:

(a) If a person is tried by the Tribunal, he or she shall not be tried again by a national court;

(b) By the same token and subject to two exceptions, a person tried by a national court cannot be tried again by the Tribunal.

The two exceptions are where a person was tried for an act falling within the purview of the Tribunal but that was characterized by the national court as an ordinary crime or where "the national court proceedings were not impartial and independent, were designed to shield the accused from international criminal responsibility," or the case was not "diligently prosecuted" (see art. 10, para. 2(b) of the statute). In these two cases the principle non bis in idem no longer applies and the Tribunal may try the accused once again.

89. The concurrent jurisdiction of national courts and the Tribunal is, however, qualified by a fundamental provision of the statute (art. 9, para. 2), which lays down the principle of primacy of the Tribunal over national courts. The rules specify that it is for the Prosecutor to require national authorities to provide information on cases that are the subject of investigations or criminal proceedings in that State (rule 8) and then, if he deems it appropriate, to request a trial chamber to issue an order for deferral to the competence of the Tribunal (rules 9-11). Primacy also entails that, at any stage of proceedings before a national court, the Tribunal may decide to step in and take over the case from the national court.

5. Cases where the accused or his State tries to evade international justice

90. No one is more aware than the judges of the Tribunal of the practical difficulties it may face if an accused absconds or, as is more likely, a State refuses to hand over a suspect, either because it has decided not to cooperate or, more specifically, on the ground that it is contrary to its own laws to do so. Consequently, a provision for trial by default, coupled always with the necessary protections as to due process and a right of review, has a certain attraction. However, for a number of reasons the Tribunal has come to the conclusion that such a provision should not be included in the rules.

91. This is not to say that transgressors may evade the Tribunal's jurisdiction with impunity. As pointed out above, the statute imposes a specific obligation on each State Member of the United Nations to cooperate with the Tribunal and to

comply with its orders, including those for the arrest or detention of suspects. These obligations prevail over any national law impediment to the surrender or transfer of the accused, including any treaty or national legislation on extradition. Therefore, a number of rules have been adopted by the Tribunal for the specific purpose of coping with a situation where the accused cannot be brought to trial either because he absconds or because the authorities of the State where he may be found refuse to arrest or surrender him. These rules are summed up below.

92. Once an indictment has been confirmed by a judge of the Tribunal, a warrant for the arrest of the accused will be sent to the State in which the accused lives or was last known to be present. That State is required to notify the Tribunal if it is unable to execute the warrant. Failure to report to the Tribunal within a reasonable time will be deemed failure to execute the warrant, in which case the Prosecutor may take all reasonable steps to inform the accused of the indictment, including notification in appropriate newspapers (rules 54-61).

93. If, despite these measures, the accused does not present himself or is not surrendered to the Tribunal, the indictment may then be submitted to one of the trial chambers for reconfirmation. At that time the indictment and all supporting evidence will be submitted in open session. If the Trial Chamber is satisfied that a prima facie case has been established, it shall issue an international arrest warrant to be transmitted to all States through the International Criminal Police Organization (INTERPOL). Furthermore, if the Trial Chamber is satisfied that the failure to execute the warrant was the result of failure by a State to cooperate with the Tribunal, the President shall notify the Security Council accordingly (rule 61).

94. These measures express the firm resolve of the Tribunal to bring to justice those persons responsible for crimes punishable under the statute.

6. The role of non-governmental organizations

95. One area where NGOs can be of immediate assistance is in the provision of information. NGOs can be invaluable in identifying incidents that fall within the jurisdiction of the Tribunal, tracing witnesses and, where possible, providing direct evidence for use by the Prosecutor.

96. In view of the highly specialized nature of the legal issues to be determined by it, the Tribunal has also made provision in its rules for the appearance before it by leave of amici curiae (rule 74). Not only will this enable the Tribunal to have access to independent expert advice on any matter it may wish but it will also permit other interested parties, such as States and NGOs, to present their views.

97. Another area where NGOs can assist the Tribunal will be in the provision of support for victims and witnesses. An existing organization may be far better placed to provide practical assistance, whether it be financial, psychological or vocational, than a judicial body that currently lacks the necessary resources, both human and financial, to manage such tasks. More specifically,

NGOs may provide psychological and practical support to victims and witness both before and after trials. This would usefully supplement the work of the Tribunal's own Victims and Witnesses Unit (see para. 81 above), which of necessity can only provide psychological and legal counselling in the limited period when the victims and witnesses are at The Hague, pending trial of the accused.

V. ADOPTION OF THE RULES OF DETENTION

A. Unique international character

98. Another area where the Tribunal was required, of necessity, to act in an innovative way has been in devising a regime for detention of those who will appear before it as accused. For the first time in history, the accused will be held in a special detention unit governed not by national rules of detention, be they military or civilian, but under a unique system of international standards created specifically by the international body before which they will be tried. For this purpose rules governing the detention of persons awaiting trial or appeal before the Tribunal or otherwise detained on the authority of the Tribunal ("the rules of detention") were adopted by the Tribunal at the end of its third session on 5 May 1994.

B. Basic principles

99. When drafting the rules of detention, the Tribunal took into account the existing body of international standards created by the United Nations as a set of basic guidelines for States. It thus drew upon the 1977 United Nations Standard Minimum Rules for the Treatment of Prisoners, the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the 1990 Basic Principles for the Treatment of Prisoners. The Tribunal also took into account, wherever possible, the higher standards suggested by the European Prison Rules, issued by the Council of Europe in 1987. The Detention Unit is located in the Netherlands, so as to be near the seat of the Tribunal, and is actually situated - for security purposes - within a government prison, although it is, of course, subject to the exclusive control and supervision of the United Nations. Consequently, the Tribunal took care to ensure that the regime it prepared for the Detention Unit was consistent with the prison system of the Netherlands in all relevant aspects.

100. Three basic principles underlie the rules of detention. First, however serious the crimes with which they are accused may be, all persons awaiting trial must be presumed innocent until found guilty and be so treated. Secondly, their human dignity must be fully respected. This implies, among other things, that they must be humanely treated at all times while in the detention unit and that all their fundamental physical, moral and spiritual needs must be met. Thirdly, no discrimination whatsoever, based on race, colour, gender, language, ethnic origin, religion or other ground shall be practised or tolerated in the unit.

C. Another purpose-made set of rules

101. The rules of detention reflect both the unique nature of the Tribunal, the ethnic mix of persons who may appear before it, and the gravity of the offences with which they may be charged. An attempt has been made to produce a flexible regime that strikes a balance between the rights of the accused pending trial and the need to ensure the security and safety of everyone involved in the trial process while taking account of the facilities actually available in the Detention Unit.

1. Detainees

102. The detainees fall into two distinct categories: those on remand awaiting trial and a separate group comprised either of those convicted by a trial chamber but awaiting appeal, or convicted of perjury or contempt by one of the chambers. For practical reasons, all persons convicted by a trial chamber for any of the offences provided for in the statute will remain in the Detention Unit for the 30-day period allowed for service of notice of appeal under the rules of procedure and evidence and will be transferred to other institutions only if no such notice of appeal is given.

2. Ethnic groupings

103. The Tribunal has paid particular attention to the problems that may arise from the need to confine members of varied ethnic groups within a relatively small detention unit. The Detention Unit has been purpose-built for the Tribunal. Its design is based on the most modern principles. Each detainee will be lodged in a cell unit comprising a living/sleeping area and a shower cubicle with lavatory. These individual facilities make it much easier to ensure that detainees of one ethnic grouping are not placed at risk by others of a different ethnic background.

104. Provision has been made for the possibility of segregation of detainees, either on an individual basis, which may be at their own request or based on an order from the Registrar or the Commanding Officer of the Detention Unit, or on a group basis, to permit the best possible use of the communal areas of the Detention Unit. Individual segregation is subject to close medical supervision and is not to be used as a disciplinary measure in any circumstances. Group segregation must treat all groups of detainees on an equal basis, having regard to the number of detainees within each group, and is subject to the overall control and supervision of the Tribunal.

D. Major concerns

105. As most of the inmates of the Detention Unit will be detained on remand, pending trial or, possibly, appeal, special attention has been given to the human rights aspects of detention, at least where this is not inconsistent with the practical constraints of space and the need for absolute security.

1. Rights of detainees

106. Fundamental principles such as the absence of discrimination on any ground and the right to observe individual religious and moral beliefs are laid down in the rules of detention.

107. Each detainee is entitled to receive a copy of the rules of detention and any other regulations in his own language, together with other information to enable him to understand his rights and obligations while in the Detention Unit, including details of the complaints procedure and disciplinary rules. An interpreter will be made available in cases where the detainee does not speak or understand either of the working languages of the Tribunal or those spoken by any of the staff of the Detention Unit. Information relating to the detainee will be maintained by the Tribunal on a confidential basis and available only to the detainee, his counsel and persons specifically authorized by the Registrar.

108. Detainees will be permitted unlimited communication with family and friends at their own expense, subject only to such supervision and time-restraints as the Commanding Officer deems necessary. The Registrar may authorize payment for reasonable communication expenses of indigent detainees. Visits will be restricted only in so far as is necessary in the interests of the administration of justice or the security and good order of the Detention Unit.

109. Each detainee is entitled to communicate freely and without restraint with his defence counsel, with the assistance of an interpreter where necessary. The Commanding Officer may not refuse a request for a visit by counsel without reasonable grounds. All communications with counsel are privileged and interviews and visits will be conducted out of the hearing of the staff of the Detention Unit.

110. Detainees are entitled to obtain books, newspapers and any other means of recreational occupation they may wish to have, at their own expense, subject only to the interests of the administration of justice and the security and good order of the Detention Unit. Radio and television will be available to the detainees, except in special circumstances when the Prosecutor may request restricted access for a certain detainee.

111. Physical exercise facilities will be provided and a paid but voluntary work programme will be drawn up to enable detainees to work in their cell units or in the communal areas as far as practicable.

2. Security

112. Obviously, the security and good order of the Detention Unit remains an overriding concern and necessity. Consequently, the Commanding Officer may enforce control on the basis of the specific provisions of the rules of detention governing, for example, the use of force and the use of the isolation unit, and by means of internal disciplinary regulations. Visitors will be required to undergo searches of clothing and possessions and will be denied access if they refuse. This applies equally to defence counsel and diplomatic representatives and to family members.

113. For practical reasons, any major disturbance within the Detention Unit will be controlled in conjunction with the Netherlands authorities. However, the rules of detention, and the various rights protected thereunder, may be suspended only in extreme circumstances and then only for a maximum period of two days. This will enable the Tribunal to liaise with the Netherlands authorities and take such action as may be necessary at the time.

E. Relationship with the host prison

114. Another area which required special attention was the concept of the "prison within a prison". All visitors, including lawyers and diplomats, will be required to go through the entry procedure for the host prison as well as for the Detention Unit. There are also a number of areas for which the Netherlands prison administration will be responsible, ranging from practical aspects, such as the provision of food, laundry and medical services, to more substantive matters, such as complaints against a decision by the governor of the host prison on a matter that affects a Tribunal detainee. The two areas of responsibility are closely coordinated and care has been taken to ensure that the two systems are compatible on a day-to-day basis. The Commanding Officer of the Detention Unit and the governor of the host prison will be expected to be in constant communication with each other.

F. The authority in control of the Detention Unit

115. The Commanding Officer will be the head of the staff of the Detention Unit. He will have sole responsibility for the day-to-day management of the unit, subject only to the specific requirements of the rules of detention. In most matters, he reports to the Tribunal's Registrar, who is responsible for the administrative and financial aspects of the Detention Unit. Matters affecting the individual rights of detainees may be referred to the President for decision, while issues affecting the Detention Unit as a whole are referred to the Tribunal for action by the Bureau.

G. Inspection

116. In line with current thinking on the control and administration of penal institutions, provision has been made in the rules of detention for frequent and unannounced inspections by an independent authority, appointed by the Tribunal to report to it on conditions within the Detention Unit. In addition, the Bureau may, at any time, appoint a judge of the Tribunal to report to the Tribunal either on general conditions or on any particular aspect of the implementation of the rules of detention.

VI. ESTABLISHMENT OF THE REGISTRY AND ITS FUNCTIONS

A. Introduction

117. Article 17 of the statute of the Tribunal provides for the establishment of the Registry, which shall be responsible for the administration and servicing of the Tribunal. In particular, the report of the Secretary-General spells out the responsibilities of the Registry, which include, but are not limited to: (a) public information and external relations; (b) preparation of minutes of meetings; (c) conference-service facilities; (d) printing and publication of all documents; (e) all administrative work, budgetary and personnel matters; and (f) serving as the channel of communication to and from the Tribunal (S/25704, para. 90).

118. The rules of procedure and evidence of the Tribunal contain detailed provisions relating to the effective functioning of the Tribunal and set out specific tasks of the Registry in connection with the administrative and financial management of the Tribunal. They also contain a great number of rules pertaining to the servicing of the Tribunal and describe the procedures to be followed in connection with investigations, pretrial proceedings, proceedings before the trial chambers and appellate and review proceedings. The Registry is assigned a series of tasks and responsibilities in connection with each of the successive stages of the proceedings.

119. Another instrument setting out duties of the Registry is the headquarters agreement concluded between the United Nations and the host country. It is the task of the Registry to implement the provisions of this agreement on behalf of the Tribunal, in close cooperation with the Netherlands authorities, so as to secure the proper functioning of the Tribunal in the host country.

B. Administrative and financial management

120. As is spelled out in the rules of procedure and evidence, the Registry shall assist the chambers, the plenary meetings of the Tribunal, the judges and the Prosecutor in the performance of their functions. Moreover, under the authority of the President, the Registry is responsible for the administration and servicing of the Tribunal and serves as its channel of communication (rule 33).

121. As part of the administrative and financial management of the Tribunal, the Registry carries out duties in the area of financial and accounting administration, and it is developing the capacity to provide archives and distribution services, conference and public information services, documents and library services and security services. In this connection, the Registry now has a number of staff members who have acquired over the years substantial experience elsewhere in the United Nations system.

122. Procedures for the recruitment and administration of the Tribunal's staff have been greatly facilitated by the decision taken by the Under-Secretary-General for Administration and Management, in May 1994, to establish practical and expeditious personnel arrangements, compatible with United Nations rules and

personnel policies. Given the fact that the functions of the Tribunal are highly specialized and that the staff of the Tribunal are recruited specifically for service with the Tribunal, rather than with the Secretariat as a whole, the Registrar is now, under these arrangements, delegated authority to appoint staff, in the name of the Secretary-General, up to the D-1 level, and to terminate appointments up to that level. In this regard, it should also be noted that, under present circumstances, initial appointments may be made only on a short- or fixed-term basis, not exceeding one year, within the staffing table approved by the General Assembly. All efforts will be made by the Registry to secure the international character of the staff of the Tribunal on as wide a geographic basis as possible.

123. The Registry is not only faced with the task of setting up the administration of an organ of the United Nations, with all the regular features of such administration, but it has also to deal with the special requirements relating to the unique character of the Tribunal as an international criminal judicial institution. The infrastructure and the logistics of such an institution involve strict security measures for the premises and, a unique feature, the construction of a courtroom (and, in due course, of a second and third courtroom). It is obvious that, to design a modern courtroom that fulfils all the needs and requirements of international criminal proceedings, much specialized knowledge and expertise has had to be mobilized and advantage taken of modern technology. The plans for the courtroom have to take into account the rights and interests of all parties in the proceedings, including those of witnesses, as well as the expected keen interest in the trials on the part of the media and the public at large. Furthermore, specific facilities have to be provided for the witnesses and the victims. A task force, responsible for the organization of the Tribunal's premises and which also deals with preparations for the construction of the courtroom, is chaired by the Registrar. In these matters, the constructive cooperation of the competent departments of the Netherlands administration has proved to be of invaluable help.

124. Another operation in which the Registry was heavily involved was the construction of detention facilities. Steps had to be taken to provide the Detention Unit with adequate and well-trained staff. The assistance rendered by the Netherlands authorities and, in particular, the General Director of the host prison, to secure the recruitment and training of Netherlands and international staff for the Detention Unit is noted with gratitude.

125. The Registry performs tasks in connection with public information and external relations of the Tribunal. From the very first stages of its existence, the media have taken a keen interest in the activities of the Tribunal, and considerable efforts have been made to satisfy the public need for information. Press and information facilities are a key requirement of the Tribunal's infrastructure and the necessary preparations are being made to meet the demands of the public interest. Already a Press and Information Officer has been appointed.

C. Servicing the Tribunal

126. The rules of procedure and evidence contain numerous provisions setting out the tasks of the Registry in servicing the Tribunal. Many of these duties are of a legal and administrative nature and require expert knowledge and experience of judicial proceedings, particularly in matters relating to criminal procedure. The use of modern technology will greatly facilitate the activities of the Registry in servicing the Tribunal.

127. The servicing of the Tribunal includes activities relating to the preservation of documentary materials in the archives of the Tribunal, the fulfilment of functions in connection with plenary meetings of the Tribunal and the carrying out of tasks in connection with the secretariat of the judges and the chambers, of both a procedural and a substantive nature. As part of its servicing function, the Registry has elaborate duties in connection with the admission of defence counsel and, more particularly, with the assignment of counsel. These duties are described in more detail below.

128. The Registry acts as a channel of communication with States, in particular, with the host country, and with interested and competent agencies and institutions, including bar associations and other associations of lawyers. Another special responsibility is the provision of protective measures for victims and witnesses, as well as counselling and support for these persons, in particular, in cases of sexual assault. The Registry is in the process of setting up a Victims and Witnesses Unit as provided for in rule 34 (see para. 81 above and paras. 130-132 below).

129. An important responsibility of the Registry flows from the nature of criminal proceedings. The Registry will have to carry out the tasks entrusted to it in the rules of procedure and evidence (part five of the rules) in connection with pretrial proceedings, in particular, the procedures of confirmation, amendment or withdrawal of indictments, issue of arrest warrants, procedures in case of failure to execute a warrant, the procedure for the appearance of the accused, procedures for detention on remand and provisional release and procedures to obtain depositions. Tasks of the Registry in connection with proceedings before the trial chambers (part six of the rules) include procedures relating to amici curiae, summons of witnesses and experts, record-keeping, procedures in case of contempt of court and procedures for the restitution of property and in connection with compensation to victims. Finally, it should be noted that the rules of procedure and evidence provide that the Registry is also required to fulfil certain functions in relation to appellate proceedings, review proceedings and with respect to pardon and commutation of sentences.

D. Protection, counselling and support for victims and witnesses

130. The Victims and Witnesses Unit is being created to assist victims and witnesses during the successive stages of their involvement with the Tribunal and, in particular, during the period when their presence is required in The Hague for the purpose of presenting evidence to a trial chamber.

131. For the proper functioning of the Victims and Witnesses Unit competent staff are needed. In this connection due weight will be given to the employment of qualified women as required by rule 34 B. The Victims and Witnesses Unit will also have to rely on the expertise and the professional experience of consultants whose services may be called upon when their advice and assistance are particularly needed. It is also envisaged that an advisory group composed of persons from various disciplines and backgrounds will be created, which may meet periodically in order to serve as a platform for providing expertise and guidance to the Unit.

132. The tasks of the Victims and Witnesses Unit will include the briefing of investigators who interview victims and witnesses and, where necessary and feasible, the arrangement of protective measures and support to them. During the period when victims and witnesses are called upon to appear before the Tribunal, the Unit will have special responsibilities to provide information to victims and witnesses on the conduct of trials and on the role and the position of witnesses in the proceedings. The Unit may also provide psychological help and support at this stage and coordinate, in close operation with the competent authorities, protection measures that would include appropriate housing facilities. Moreover, the Unit will also coordinate, with the help of other organizations and institutions, the protection and support of victims and witnesses in the post-trial stage when they have returned to their own countries or elsewhere. For this purpose an international network of assistance is to be set up with the Victims and Witnesses Unit as the focal point. The Unit will be able to function effectively only if cooperation and assistance is forthcoming from Governments, professional groups and NGOs and institutions.

E. Assignment of counsel

133. In his report (S/25704), the Secretary-General noted that it was axiomatic that the Tribunal must fully respect internationally recognized standards regarding the rights of the suspect or accused at all stages of its proceedings. These standards are contained in article 14 of the International Covenant on Civil and Political Rights. Articles 18 and 21 of the statute provide, inter alia, for the suspect during the investigation, and the accused, from the time of his indictment, to have the right to legal assistance from a counsel of his own choice or, if indigent, to free legal assistance. Similarly, rules 42 and 55 of the rules of procedure guarantee this right and confer on the Registrar the responsibility of defining the terms and conditions under rule 45.

134. Consequently, the Registrar has prepared, in close consultation with the judges, a directive governing the procedure for assignment of defence counsel, the status and conduct of assigned counsel, the calculation and payment of fees and disbursements and the establishment of an advisory panel.

135. The advisory panel is a consultative body composed of counsel drawn by lot from those whose names appear on the list of assigned counsel prepared by the Registrar and also of those proposed by bar associations. The advisory panel will be consulted by the Registrar or the President whenever necessary on questions relating to the assignment of counsel.

136. In the preparation of this directive, the Registrar has taken into consideration the fact that the provisional budget of the Tribunal includes only a limited sum for temporary assistance, under which the provision of legal assistance may fall. In view of the fact that it will be necessary to allocate additional financing to cover this substantial expense of the Tribunal, fees and disbursements for assigned counsel have been set at a modest level, but in such a way as to cover expenses reasonably incurred in the performance of their duties.

137. It therefore falls to the Registrar, acting in consultation with the President, to review the requests for assignment of counsel and the statements of assets of the persons making such requests, to make the relevant decisions and notify the applicant accordingly, to establish a list of counsel who have indicated that they would be willing to act as assigned counsel and, finally, to confirm and authorize their fees and disbursements. In addition, and subject to availability, the Registrar will supply assigned counsel with the basic equipment and facilities necessary to perform their tasks.

138. Thus, a large amount of preliminary information and related decisions are left to the Registrar in this respect, both in the interests of the good administration of justice and in order to respect the rules of ethics that govern the legal profession.

VII. STAFFING OF THE OFFICE OF THE PROSECUTOR AND ITS ACTIVITIES

A. Introduction

139. In October 1993 the Security Council appointed Mr. Ramon Escovar-Salom, the Public Prosecutor of Venezuela, as the Prosecutor of the Tribunal. Mr. Escovar-Salom stipulated that he would not be in a position to take office until February 1994. On 20 January 1994, Mr. Escovar-Salom recommended to the Secretary-General of the United Nations that Mr. Graham Blewitt, then the Director of the Nazi War Crimes Unit in Australia, be appointed to the position of Deputy Prosecutor of the Tribunal.

140. Mr. Escovar-Salom subsequently advised the Secretary-General that he was not in a position to serve as Prosecutor of the Tribunal. On 21 February 1994, Mr. Blewitt commenced duty at the Tribunal as the Acting Deputy Prosecutor, pending the appointment of a Prosecutor.

141. Following his arrival at the Tribunal, Mr. Blewitt set about the task of recruiting staff for the Office of the Prosecutor, setting up the structures, operational procedures and systems for both investigations and subsequent prosecutions. He also began a series of meetings and conferences with relevant persons, Governments, international agencies and NGOs.

142. On 8 July 1994, the Honourable Mr. Richard J. Goldstone, an Appeals Court judge and Chairman of the South African Commission of Enquiry regarding the Prevention of Public Violence and Intimidation, was appointed Prosecutor by the Security Council.

B. Structure and functioning of the Office of the Prosecutor

1. Problems relating to staffing

143. The Office of the Prosecutor operates independently of the judges of the Tribunal, the Registrar and the Registry staff. There is, however, a close and cooperative relationship between the Office of the Prosecutor and the rest of the Tribunal on administrative, staffing and other relevant matters concerning the functioning of the Tribunal as a whole.

144. The selection of staff for the Prosecutor's Office has been a time-consuming yet critical exercise. It is not overstating the situation to point out that the success of the Tribunal as a whole depends very much on the calibre of the investigative staff of the Office of the Prosecutor. Having experienced and well-qualified prosecutors is important, but they can present cases to the Tribunal only based on the evidence gathered by the investigative staff. If the prosecution evidence is not thorough and complete, or is insufficiently prepared, then the risk of prosecution failure is high.

145. In selecting staff for the Office of the Prosecutor, the Acting Deputy Prosecutor had before him over 300 applications and expressions of interests from persons from around the world. The majority of these persons were lawyers, some with a great deal of prosecutorial and investigative experience. Amongst the lawyers, preference was given to persons with extensive litigation experience, particularly as criminal prosecutors, or to those with extensive experience in criminal investigations and prosecutions. Other lawyers were selected on the basis of their international or military law experience. There were sufficient applications from lawyers to enable the appointment of experienced and well-qualified prosecutors.

146. In addition to the appointment of lawyers, it was also possible to select, from the applications and expressions of interest received, suitable candidates for positions in the computer, intelligence, administrative and special advisory sections in the Office of the Prosecutor.

147. Accordingly, with one critical exception, it was possible to select suitable experienced and well-qualified staff for almost every position within the Office of the Prosecutor. The exception was in relation to positions for investigators. There were only a small number of candidates with the requisite experience from within the hundreds of applications and expressions of interest held at the Tribunal. In an attempt to identify other suitable candidates, the Acting Deputy Prosecutor wrote to all Governments, setting out the necessary criteria, and requesting that potential candidates be identified and nominated for appointment to the Office of the Prosecutor, either to be employed directly by the Tribunal or seconded by Governments. A number of Governments responded positively to both requests and it thus became possible to commence action to fill the vacant positions.

148. The process of staff selection was not only time-consuming but also frustrating, especially in the implementation of recommendations for appointment. There were several reasons, discussed elsewhere in the present report, for the delay in recruiting staff once the initial selection and

recommendation process had been completed. The unique nature of the Tribunal caused many difficulties for the relevant United Nations offices in New York. Further, the lack of a long-term budget commitment for the Tribunal and the inability to offer long-term contracts of employment to potential staff, most of whom held senior and secure positions in their own countries, was a major hindrance. Short-term contracts do not attract the usual entitlements that apply to regular United Nations appointments. Consequently, a number of suitable candidates ultimately declined offers of employment and most of the staff who agreed to move with their families to The Hague were prejudiced in financial terms. The United Nations was unable to grant exemptions to those employees of the Office of the Prosecutor who were adversely affected by the offer of a short-term contract, a matter that was completely outside the Tribunal's control.

149. The process of recruiting staff for the Office of the Prosecutor improved dramatically towards the end of May when, following repeated requests from the Tribunal, the Registrar was delegated the authority from the United Nations in New York to engage staff directly from The Hague.

2. Structure of the Office of the Prosecutor

150. The budget for the Tribunal, as approved by the General Assembly, provides for the staffing of 67 positions for the Office of the Prosecutor, including the Prosecutor himself. Working within the constraints of this budgetary staffing figure, the Acting Deputy Prosecutor established a structure for the Office of the Prosecutor, which comprises four separate sections.

151. The largest of these four sections is the Investigations Section, which is comprised of experienced senior and junior investigators, lawyers, intelligence analysts, advisers and support staff. This section is responsible for conducting all investigations, including field investigations.

152. The second section is the Prosecution Section, comprising six positions, namely, three senior experienced trial advocates, two legal advisers/researchers and secretarial support. This section will be responsible for the independent review of prosecution briefs prepared and submitted by the members of the Investigations Section, the finalization of indictments and the presentation of prosecutions before the judges of the Tribunal, in conjunction with the Prosecutor and the Deputy Prosecutor, assisted by prosecutors from the Investigations Section.

153. The Special Advisory Section is the third component of the Office of the Prosecutor. It comprises three experts in the areas of international law, military law and the laws of war; the laws of the former Yugoslavia; military matters including chains of command and order of battle; and the cultural, historical and political background relating to the Balkans, together with a Liaison Officer. This section will provide special expert advice and training in relation to these matters to all sections of the Office of the Prosecutor, thereby providing the Prosecution and Investigations Sections with the necessary background knowledge and information.

154. The remaining section within the Office of the Prosecutor, the Administration and Records Section, is responsible for the computer systems of the Office of the Prosecutor and the handling, processing and filing of all material, evidence, statements and other records received or generated by the Office of the Prosecutor.

155. The Acting Deputy Prosecutor has recruited staff for each position within the Office of the Prosecutor, subject only to the lack of candidates for the positions of investigators. In the main, these staff have been offered contracts of employment, as United Nations employees with the Tribunal, for a 12-month period. This limited period is due to the current budgetary constraints imposed by the General Assembly. Provided the occupants of each position undertake their duties and responsibilities in an efficient and proper manner, it is intended that the contracts will be renewed. Job descriptions have been prepared for each position within the Office of the Prosecutor, detailing the primary duties and responsibilities associated with each position. Further separate guidelines, information and instruction manuals and procedure manuals have been prepared for the instruction and assistance of each section within the Office.

3. Need for cooperation with other bodies

156. It has been clear for a considerable time that the number of staff allocated to the Office of the Prosecutor will be insufficient to undertake all the necessary investigative tasks. It will, therefore, be necessary to rely on the assistance of Governments and other agencies. Two Governments have already agreed to provide staff, including investigators and lawyers, to the Office of the Prosecutor. The Tribunal encourages all Governments to make similar offers. Such secondments will increase the size of the Office of the Prosecutor sufficiently to enable a wider, thorough and more efficient investigative strategy to be implemented. Moreover, there are thousands of potential witnesses to be interviewed and the Office of the Prosecutor will need the full cooperation and assistance of Governments, NGOs and other bodies.

C. Relations with other bodies and with States

1. Commission of Experts

157. Not long after the establishment of the Tribunal, the judges had the opportunity of meeting with Mr. Chérif Bassiouni, Chairman of the Commission of Experts established pursuant to Security Council resolution 780 (1992). On 25 February 1994, the Acting Deputy Prosecutor and other staff members of the Tribunal met in The Hague with Mr. Bassiouni and other members of the Commission. The work and findings of the Commission were discussed at length and certain materials were handed over to the Office of the Prosecutor. Subsequently, the Acting Deputy Prosecutor visited the Commission's premises in Geneva. A staff member also visited Chicago to inspect and be instructed in relation to the Commission's computer database. The Acting Deputy Prosecutor also had meetings with most of the Commission's commissioners and staff members.

158. During April 1994, the Office of the Prosecutor obtained a copy of the Commission's database. Subsequently, in May 1994, all of the documents from Chicago, which form the basis of the information in the database, were received by the Tribunal. By the end of May 1994, action had commenced to scan those documents onto the Prosecutor's own computer system. This process involved some technical difficulties initially but eventually the system of integrating the Chicago database into the Prosecutor's computer system was achieved. The Office of the Prosecutor has enjoyed a close working relationship with the Commission of Experts.

2. Contacts with States

159. A number of Governments have carried out arrests and commenced investigations into allegations that the arrested persons have been involved in the commission of war crimes or crimes against humanity in the former Yugoslavia. Investigations are also being carried out in relation to other persons not yet arrested.

160. It is the responsibility of the Office of the Prosecutor to monitor all such investigations and any resulting prosecutions so that, in appropriate circumstances, the Tribunal may exercise its own jurisdiction. To assist the monitoring process, trial observers may be engaged to attend prosecutions that may fall within the Tribunal's jurisdiction.

161. The Acting Deputy Prosecutor has met with the ambassadors of many countries and, without exception, all of those countries have given assurances of goodwill and cooperation. On 11 April 1994, the Acting Deputy Prosecutor wrote a letter to Governments, with the exception of the Governments of the republics of the former Yugoslavia, which was delivered to the Permanent Representatives of all States Members of the United Nations and Observer Missions in New York. This letter not only sought the cooperation of all Governments but set out a number of policy issues and requests for assistance, including the nomination of candidates for investigative positions and for any evidence relating to the commission of war crimes to be forwarded to the Tribunal.

3. Contacts with non-governmental organizations

162. The Acting Deputy Prosecutor has also met with representatives of NGOs that are eager to cooperate with and assist the Tribunal. These meetings have been very useful and encouraging. In an attempt to formalize relations with NGOs a statement for the information of NGOs was prepared and forwarded to each NGO that has an interest in the work of the Tribunal or which is active in an area relevant to the Tribunal. The various ways in which NGOs can assist the work of the Office of the Prosecutor are set out in that statement, and include acting as trial observers, providing specialized services and so on.

4. Contacts with the media

163. The Acting Deputy Prosecutor has attempted in his dealings with the media to promote a positive attitude towards the Tribunal and to provide sufficient information, without revealing any matters of an operational nature, to facilitate accurate and responsible reporting of the Tribunal's activities and the work of the Office of the Prosecutor in particular.

D. Concluding remarks

164. Although the Security Council established the Tribunal in May 1993, the task of setting up the Office of the Prosecutor only commenced following Mr. Blewitt's appointment as Acting Deputy Prosecutor in February 1994. Since then, and despite delays occasioned by budgetary considerations and recruitment problems, the Office of the Prosecutor has become operational. Now that the Prosecutor has been appointed, it is anticipated that indictments will be ready for presentation before the end of 1994.

Part Three

ACTIONS OF STATES MEMBERS OF THE UNITED NATIONS

VIII. COOPERATION OF THE HOST STATE

165. Since the Tribunal was first established, the cooperation of the Netherlands authorities, in particular the Ministry of Foreign Affairs and the Ministry of Justice, has been unfailing.

166. In particular, the Netherlands authorities have been extremely helpful in identifying suitable premises for the Tribunal, assisting in negotiations with the owners of the premises on the lease and for the adaptation of the building to suit the requirements of the Tribunal, arranging the construction of a detention unit, within a prison, for the accused awaiting trial, and in negotiating the headquarters agreement with the United Nations. Furthermore, the Netherlands authorities have put in train all the necessary security measures for the Tribunal, the judges and the staff. They are also taking steps to ensure the security of victims and witnesses when trials start.

167. Undoubtedly the Tribunal could not have made so much headway in establishing the necessary practical foundations for its future judicial action without the assistance and support of the Netherlands authorities. The Tribunal wishes to express its gratitude to the Netherlands Government and is confident that it may continue to count on its steady and unwavering support.

IX. HEADQUARTERS AGREEMENT

168. Continuing the excellent relations that traditionally obtain between international judicial organizations and the Netherlands authorities, the United Nations and the Kingdom of the Netherlands have entered into a headquarters agreement, which formalizes the presence of the Tribunal in The Hague. The agreement, which was initialled by both parties on 27 May 1994, takes effect on a provisional basis as from the date of signature and formally enters into force the day after all legal requirements for entry into force have been met.

169. The headquarters agreement contains some 29 articles, most of which relate to the normal incidents of a diplomatic or international relationship. The Tribunal is recognized as having full juridical personality in the host State and both the Convention on the Privileges and Immunities of the United Nations ("the General Convention") 11/ and the Vienna Convention on Diplomatic Relations 12/ apply. Its premises, archives and documents are inviolable and remain under the control of the Tribunal at all times. The Tribunal enjoys the usual exemptions accorded to diplomatic missions and international organizations and the judges, the Prosecutor and the Registrar have the status of diplomatic agents. Other officials of the Tribunal enjoy the privileges and immunities provided for in the General Convention, with senior staff having the status of members of diplomatic staff of comparable rank.

170. The headquarters agreement is unique, however, in that it contains a number of provisions drafted to reflect the specific requirements of the Tribunal. These relate particularly to the movements of the accused, counsel and witnesses into and within the Netherlands. The host State has agreed not to exercise its criminal jurisdiction over persons who enter the country as suspects or accused, from the time they are transferred to the Tribunal to a period of 15 days after release or acquittal. Witnesses appearing on a summons or request from the Tribunal enjoy similar immunity. All persons appearing before the Tribunal have the right of unimpeded entry and exit into and within the host State, as do persons accompanying witnesses.

171. Counsel for a suspect or accused have full freedom to exercise their functions independently while in the Netherlands, including exemption from immigration restrictions. All documents relating to their functions as counsel are inviolable and they will enjoy full immunity from criminal and civil jurisdiction for acts performed in their official capacity.

X. ENACTMENT OF IMPLEMENTING LEGISLATION

172. Security Council resolution 827 (1993) lays down in paragraph 4 that "all States shall cooperate fully" with the Tribunal and its organs and "shall take any measures necessary under their domestic law to implement the provisions" of the statute and comply with "requests for assistance or orders issued by a trial chamber". The statute establishes in article 29 the principle of cooperation between States and the Tribunal "in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law". Rule 58 of the rules of procedure and evidence restates this principle and confirms that the obligations on States stemming from the Statute "shall prevail over any legal impediments to the surrender or transfer of the accused to the Tribunal" that may exist under national legal systems.

173. At the close of the first session, in a letter dated 30 November 1993, the President of the Tribunal drew the attention of the Secretary-General to the necessity for Member States not only to designate, in their domestic legal systems, a body responsible for dealing with any request from the Tribunal, but also to adopt the legislative or regulatory provisions required to give effect to the Tribunal's statute.

174. After the Tribunal adopted its rules of procedure and evidence, the President, on 14 March 1994, sent a note to the representatives of the Member States. In this and subsequent notes, he stressed the importance of the provisions relating to the transfer of suspects and accused and called upon States not to apply to such transfer, by analogy, existing legislation or bilateral conventions governing extradition. The transfer of the accused to the Tribunal is not an issue coming within the purview of legal relations between States: rather, it pertains to the general attitude of cooperation that each State must adopt with respect to an international criminal court.

175. A number of States have designated a competent authority for receiving requests from the Tribunal: the Ministry of Justice (Finland, France, Germany, Italy, Netherlands, Spain, Switzerland, Turkey); the Attorney General's office

(Norway); the Ministry of Foreign Affairs (Sri Lanka, Sweden, United Kingdom of Great Britain and Northern Ireland); and its Embassy in the Netherlands (United States of America).

176. According to information received to date, the following States have adopted legislation to implement the Tribunal's statute and rules of procedure and evidence: Finland, Italy, Netherlands, Norway, Spain and Sweden.

177. The following States have indicated their intention to adopt such legislation in the near future and some of them have communicated to the Tribunal a general outline of the draft text currently under consideration: Australia, Austria, Denmark, France, New Zealand, Sri Lanka, Switzerland, Turkey, United Kingdom and United States. This last State has drafted a specific agreement with the Tribunal on the surrender of persons: once concluded it will still require implementing legislation.

178. In general, most of the legislative and regulatory texts communicated envisage an ad hoc system of legal cooperation with the Tribunal.

179. Where concurrent jurisdiction as between the Tribunal and national authorities is concerned, the enacted or proposed legislation confirms the binding force of the Tribunal's decisions. It also upholds the principle of the primacy of the Tribunal as regards both investigations and proceedings, subject, for certain countries, to practical arrangements (e.g., a declaratory judgement or a decision of the national authorities to discontinue proceedings).

180. Most States have set up procedures to handle requests for transfer, to be conducted before a designated national court (e.g. the District Court of the Hague, the Audiencia Naçional in Madrid, the High Criminal Court in Ankara, the Court of Appeal in Paris and in Rome). A few countries have laid down an ad hoc procedure, while others plan to apply mutatis mutandis their national provisions relating to extradition, though only as regards questions of procedure and without making the transfer of the accused to the Tribunal subject to the same restrictions that apply to extradition (e.g. non-extradition of nationals or of persons accused of political crimes). In certain countries, provision has been made for appeals against or review of decisions of national courts on the Tribunal's requests for transfer.

181. In some States enforcement of the sentences handed down by the Tribunal will form the subject of an appropriate exequatur procedure, on the grounds that this matter is governed by the law of the host country.

182. A number of texts or draft laws also contain provisions guaranteeing immunity and free transit to persons summoned to appear before the Tribunal as an accused, witness or expert when passing through the territory of those countries. Such provisions envisage the necessary and appropriate measures for the safety of the persons in transit and, in case of transfer of accused, for the prevention of their escape.

XI. VOLUNTARY CONTRIBUTIONS BY STATES

183. In its resolution 47/235 of 14 September 1993, the General Assembly invited Member States and other interested parties to make voluntary contributions to the Tribunal in cash and in the form of services and supplies acceptable to the Secretary-General.

184. As of 15 July 1994, the following countries have contributed funds totalling $3,208,900 in support of the Tribunal:

	$
Canada	168 279.65
Hungary	2 000.00
Ireland	6 767.56
Liechtenstein	2 985.00
Malaysia	2 000 000.00
Namibia	500.00
New Zealand	14 660.00
Pakistan	1 000 000.00
Spain	13 725.16

185. In addition, the following countries have pledged to contribute to the Trust Fund:

	$
Ireland	21 428.57
Italy	1 785 714.20
Norway	130 000.00

186. The United States has made a pledge of a contribution in kind of a computer system for the Office of the Prosecutor to a maximum value of $3 million and, in addition, has seconded 22 Professional staff to the Office of the Prosecutor for terms of up to two years.

187. The United Kingdom has made a contribution in kind in the form of computer equipment valued at approximately £20,000.

188. Sweden has agreed to second two investigators to the Office of the Prosecutor.

Part Four

XII. CONCLUDING OBSERVATIONS

189. In his opening speech of 21 November 1945, Robert H. Jackson, the Chief United States Prosecutor at the Nürnberg International Military Tribunal, took pride in the fact that, within less than eight months of its creation, the Tribunal was already fully operational:

> "[L]ess than eight months ago today the courtroom in which you sit was an enemy fortress in the hands of German SS troops. Less than eight months ago nearly all our witnesses and documents were in enemy hands. The law had not been codified, no procedures had been established, no tribunal was in existence, no usable courthouse stood here, none of the hundreds of tons of official German documents had been examined, no prosecuting staff had been assembled, nearly all of the present defendants were at large." 13/

190. Admittedly, the historical circumstances surrounding the creation and work of the Nürnberg Tribunal are drastically different from those behind the setting up of the present Tribunal. Nevertheless, one cannot fail to note - with regret - that at the time of the adoption of the present report, namely eight months after the members of the Tribunal took office, this institution is not yet in a position to accomplish fully its primary mission, namely, to render justice.

191. The principal difficulties, of a practical, financial and other nature, that so far have prevented the Tribunal from initiating trials, have already been set out above (see paras. 28-42 and 148-149 above).

192. However, the unstinting support of the Secretary-General, the generous cooperation of numerous States, notably the host country, the dedication of the Tribunal's outstanding, albeit meagre, staff have made it possible to lay the indispensable foundation for the Tribunal's tasks. The essential legal framework of the Tribunal's proceedings has been rapidly established (the rules of procedure and evidence, together with the guidelines for the assignment of counsel). Suitable premises have been found for the Tribunal and adapted to the needs of the judicial process. An Acting Registrar has been appointed, the Registry has been staffed, although not yet in full, and the core functions of the Victims and Witnesses Unit have been established. The Detention Unit, where accused will be held pending trial, has been built and the necessary rules of detention adopted by the Tribunal.

193. The gradual staffing of the Office of the Prosecutor, which owing to a host of events and difficulties was rendered possible only as late as June 1994, permits one to hope that, in the next few months, the Prosecutor may start issuing indictments for review by judges. However, one should not be blind to the fact that much remains to be accomplished before trials start. A formal budget must still be approved. The Office of the Prosecutor still needs to be fully staffed and equipped with all the necessary infrastructure and modern technology required. The Tribunal's courtroom - the only one budgeted by the

United Nations so far - is still to be finished (it is anticipated it shall be ready by the end of October).

194. In order to accomplish its mission expeditiously and successfully, the Tribunal needs to rely on the continued cooperation of States and still more support from both the General Assembly and the Security Council. The Tribunal is confident that such cooperation and support will be forthcoming, so that it will soon be able to play its own specific role in contributing to the alleviation of the suffering of the population of the former Yugoslavia and bringing to justice those found guilty of the crimes committed there.

195. The establishment of the Tribunal - a novel and experimental institution - is a momentous advance in the world community, for this institution is called upon impartially to vindicate and enforce the abiding demands of humanity. These demands were first proclaimed in the international community in 1899, at The Hague. On that occasion, the famous clause upholding "the laws of humanity" (les lois de l'humanité), suggested by the Russian delegate (of Estonian origin), Fyodor Fyodorovich de Martens, was inserted in the preamble of the Hague Convention on the Laws and Customs of War on Land. Subsequently these laws were enforced by the Allied Powers after World War II, at Nürnberg and Tokyo, although this was effected in a unilateral way, by the victors against the vanquished. Thereafter the laws of humanity were proclaimed in international pronouncements. The Universal Declaration of Human Rights 7/ and the Convention on the Prevention and Punishment of the Crime of Genocide, 14/ both adopted in 1948 by the United Nations General Assembly, restated and spelled out those laws. In 1949, in the Corfu Channel (Merits) case, ICJ emphasized that "elementary considerations of humanity [are] even more exacting in peace than in war". 15/ However, since 1946-1947, no international institution has been entrusted with the noble but difficult task of enforcing those laws by calling to account those who have ridden roughshod over them. This long silence of the world community should not be surprising: Sir Francis Bacon noted as early as 1621 that "in times no less than in space there are wastes and deserts". 16/

196. The United Nations, which over the years has accumulated an impressive corpus of international standards enjoining States and individuals to conduct themselves humanely, has now set up an institution to put those standards to the test, to transform them into living reality. A whole body of lofty, if remote, United Nations ideals will be brought to bear upon human beings: all the individuals found guilty of rape, torture and massacre will be severely punished for their unacceptable disregard of the dignity of other human beings. Through the Tribunal, those imperatives will be turned from abstract tenets into inescapable commands. Similarly, the United Nations, which over many years has solemnly adopted, at the hortatory level, international standards on the treatment of detainees by Member States, will, through the Tribunal, make those standards binding in the first international prison for detainees under the control and supervision of the United Nations.

197. The establishment of the Tribunal may constitute a turning-point in the world community. If the Tribunal proves that it can work in an effective and dispassionate way and the necessary cooperation of all States and United Nations

bodies is forthcoming, it may open a new path towards the realization of true international justice, and hence of peace, in the world community.

198. When they were sworn in on 17 November 1993, the judges solemnly undertook to fulfil their mission impartially and conscientiously. They will not be deflected from their firm commitment to accomplish their task to the best of their energy and ability. They will do this not only as a result of the obligations undertaken by them towards the international community and the United Nations body which elected them, the General Assembly. They also owe a compelling moral obligation to the population of the former Yugoslavia. The Tribunal fervently hopes to contribute, by its own means, to restoring humane and peaceful conditions in that torn region and to alleviating the anguish and grief of those who have suffered and still suffer from armed violence and brutality.

Notes

1/ B. V. A. Röling, "The Law of War and the National Jurisdiction since 1945", in Hague Academy of International Law, Collected Courses, 1960-II p. 354 (Leyden, A.W. Sijthoff, 1961).

2/ Fédération Nationale des Déportés et Internés Résistants et Patriotes and others v. Barbie, Judgement of 6 October 1983, Cass. crim., RGDIP, 1984, p. 508 (in French), (1985) 78 I.L.R 125.

3/ Röling, op cit., p. 356.

4/ Trial of the Major War Criminals before the International Military Tribunal, Nuremberg 14 November 1945-1 October 1946 (Nuremberg, 1947), vol. 1, p. 218.

5/ G. W. F. Hegel, Grundlinien der Philosophie des Rechts (Elements of the Philosophy of Right), 1821, para. 130.

6/ Trial of the Major War Criminals, vol. 1, p. 8 (London Agreement of 8 August 1945).

7/ General Assembly resolution 217 A (III).

8/ General Assembly resolution 2200 A (XXI), annex.

9/ General Assembly resolution 44/128, annex.

10/ Trial of the Major War Criminals, vol. 1, p. 221.

11/ General Assembly resolution 22 A (I).

12/ United Nations Treaty Series, vol. 500, No. 7310.

13/ Trial of the Major War Criminals, vol. 2, p. 100.

14/ General Assembly resolution 260 A (III).

15/ Corfu Channel Case (Merits) 1949 I.C.J. 4, at 22.

16/ F. Bacon, Novum Organum, sive Indicia Vera de Interpretatione Naturae (New organ, or true indicia for the interpretation of nature), 1620, sect. I, para. 78. (Sunt enim non minus temporum quam regionum eremi et vastitates.)

Annex

COMPOSITION OF THE TRIBUNAL

A. Judges of the Tribunal as of July 1994

Antonio Cassese (Italy) President

Judge Cassese has been Professor of International Law in the faculty of Political Science at the University of Florence since 1975 and Professor of International Law at the European Political Institute in Florence since 1987. He has represented the Italian Government on many occasions at United Nations meetings on human rights and at the Geneva Diplomatic Conference on the Humanitarian Law of Armed Conflicts (1974-1977). Until his election as a judge of the Tribunal last year, Judge Cassese was President of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment.

Elizabeth Odio-Benito (Costa Rica) Vice-President

One of two female judges at the Tribunal, Judge Odio-Benito was twice Minister of Justice for Costa Rica (1978-1982 and 1990-1994). She is also a Professor of Law at the University of Costa Rica, with a long-term private practice as an attorney. In addition, since 1980, Judge Odio-Benito has been involved in human rights task forces at the United Nations, including appointment as Special Rapporteur on Intolerance and Discrimination on Grounds of Religion or Belief, and is the Latin American representative on the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture.

Adolphus Karibi-Whyte (Nigeria)

In addition to being a Justice of the Supreme Court of Nigeria, Judge Karibi-Whyte has been chairman of a number of tribunals and judicial inquiries in Nigeria, including the Civil Disturbances Tribunal. He has nearly 20 years of judicial experience, including 10 years on the Supreme Court, together with experience within the Ministry of Justice.

Gabrielle Kirk McDonald (United States of America)

Judge McDonald has almost 30 years of combined experience as a judge, Professor of Law and legal practitioner. A Federal Court Judge for nearly 10 years, Judge McDonald also practised civil rights law and has served as a professor at a number of law schools in the United States.

Haopei Li (China)

Judge Li was Legal Adviser to the Ministry of Foreign Affairs and part-time Professor of International Law at Peking University. In addition to his teaching duties within China, Judge Li is a member of the Institute of International Law and a member of the Permanent Court of Arbitration. He has represented China on a number of occasions on international committees and was the Chinese representative to the United Nations Conference on the Law of Treaties between States and International Organizations. Judge Li was also one of the drafters of the first Criminal Law of China and the Law of Criminal Procedure.

Jules Deschênes (Canada)

Judge Deschênes was Chairman of the Commission of Inquiry on War Criminals in Canada. In addition to having sat on the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights in Geneva and having been the adviser to the Canadian delegation to the Commission on Human Rights, Judge Deschênes was Chief Justice of the Superior Court of Quebec for 10 years. He has nearly 50 years of combined experience at the Bar or serving on the Bench.

Sir Ninian Stephen (Australia)

After commencing his career at the Bar in the early 1950s, Judge Stephen was appointed to the Supreme Court of Victoria in 1970, where he sat in both civil and criminal jurisdictions prior to being appointed to the High Court of Australia in 1972. Judge Stephen was appointed to the Privy Council in 1979 and subsequently sat as a member of its Judicial Committee. In 1982 he was appointed Governor-General of Australia, a position he held until 1989.

Rustam Sidhwa (Pakistan)

Judge Sidhwa commenced his career at the Bar in 1951 and thus brings more than 40 years of experience to the Tribunal. He has experience of both criminal and civil proceedings and is also enrolled on the panel of lawyers for State representation before both the High Court and the Supreme Court. Judge Sidhwa was appointed to the Bench in 1978 and since then has served on the Lahore High Court and as a Judge of the Supreme Court of Pakistan from 1989 to 1992. In addition to his judicial experience, Judge Sidhwa was nominated by Pakistan in 1968 to the United Nations Register of Experts in Legal and Other Fields.

Georges Abi-Saab (Egypt)

Judge Abi-Saab has been Professor of International Law at the Graduate Institute of International Studies, Geneva, since 1969, having taught there from 1963. He is a member of the Institute of International Law and was a member of the Egyptian delegation to the Conference of Government Experts in 1972 and the

Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts in 1974-1977. He has also acted as State Counsel or arbitrator in a number of international litigations and has served twice as ad hoc Judge of ICJ.

Datuk Wira Lal Vohrah (Malaysia)

Prior to his election to the Tribunal, Judge Vohrah was a High Court Judge in Malaysia. He has represented Malaysia at international meetings, including the United Nations Conference on the Law of Treaties at Vienna in 1969, the Third United Nations Conference on the Law of the Sea at Caracas in 1974 and the Commonwealth Law Ministers' Meeting at Lagos in 1975. Judge Vohrah has also represented Malaysia in inter-State negotiations on the delimitation of territorial sea boundaries and the continental shelf and on fisheries.

Claude Jorda (France)

Judge Jorda was appointed to the Tribunal in early 1994 to replace the previous French Judge, Judge Le Foyer de Costil, who resigned because of ill health. Judge Jorda brings with him considerable experience as a prosecutor, having been Procureur général at the Court of Appeal in Bordeaux from 1985 to 1992, and then Procureur général at the Court of Appeal in Paris. Prior to that time, he was Director of Judicial Services at the Ministry of Justice and also taught for six years at the École Nationale de la Magistrature.

B. The Prosecutor

Richard J. Goldstone (South Africa)

Mr. Goldstone was a barrister at the Johannesburg Bar from 1963 to 1980, before being appointed as a Judge of the Transvaal Supreme Court. In 1989, he was appointed to the Appellate Division of the Supreme Court of South Africa. Since 1991, Mr. Goldstone has been Chairman of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation.

C. The Registrar

Theodoor van Boven (Netherlands)

Mr. van Boven is a Professor of Law and was the Netherlands representative on the Commission on Human Rights from 1970 to 1975 and a member of the Subcommission on Prevention of Discrimination and Protection of Minorities from 1975 to 1976 and 1986 to 1991. He is also a member of the Committee on the Elimination of Racial Discrimination. He served as the Director of the United Nations Division of Human Rights from 1977 to 1982.